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Senate

(Legislative day of Friday, October 2, 1998)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable MIKE DEWINE, a Senator from the State of Ohio.

PRAYER

The guest Chaplain, Dr. William Hawkins, of Graves Memorial Presbyterian Church, Clinton, NC, offered the following prayer:

Gracious God, whose compassion fails not and whose mercies are fresh and new every morning, hear our prayer as we look to You in spirit and in truth. We thank You for our Nation's leaders, who in times past found in You their stay in trouble, their strength in conflict, their guide and deep resource. May it please You heavenly Father that today this gathered company will find in You the same.

As the Psalmist has exclaimed, ''Blessed is the nation whose God is the Lord'' (33:12), so may Your lordship be affirmed in our Nation and cherished always among the Members of this body. Grant unto these Senators the knowledge that they will serve our Nation best as they serve You first. Make them strong in Your strength, wise in Your wisdom, and compassionate in Your Spirit, that the legislation they propose will accomplish the greater good You would have them seek. Keep them, their families, and all those they love safe from harm, physical and spiritual, so that they can be about the affairs of our Nation with full attention and devotion.

Grant unto each a sense of divine purpose, that they know themselves here not by chance but by design. Fulfill Your intentions for them in this high office, that they will be found working together, doing that which is pleasing in Your sight and in accord with Your holy will. In Your great name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 8, 1998.

To the Senate: Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MIKE DEWINE, a Senator from the State of Ohio, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. DEWINE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished majority leader is recognized.

Mr. LOTT. Mr. President, I will yield to the distinguished Senator from North Carolina who will welcome our guest Chaplain for the day.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

WELCOME TO DR. WILLIAM HAWKINS, GUEST CHAPLAIN

Mr. FAIRCLOTH. Mr. President, I am indeed honored and happy to be here this morning with my home church preacher. Bill Hawkins has been pastor of my church for 10 years now and he has made an outstanding impression and done a great job not only for the church membership but for the city that we live in as well. He has a wife and two daughters and they mean so much to me personally and to the community we live in. He is a Virginian, but we do not intend to allow him to leave. We plan to keep him in North Carolina and we are honored that he is there. He brings the youth and vigor to our church that we so much need. We are proud to have him there.

Bill, thank you.

I yield the floor.

Mr. LOTT. Mr. President, I add my welcome to the guest Chaplain. He did a beautiful job this morning. I know he is going to be very dedicated to tending to the needs of the Senator from North Carolina, Senator FAIRCLOTH.

We are delighted to have you here.

SCHEDULE

Mr. LOTT. Mr. President, the Senate will be in a period of morning business until 10 a.m. Following morning business, under a previous order, the Senate will begin 1 hour of final debate on the conference report to accompany the VA-HUD appropriations bill. At the expiration of debate time, at approximately 11 a.m., the Senate will vote on adoption of that conference report. Following that vote, the Senate may resume consideration of the Internet tax bill. I believe we are about ready to complete action on that. We have been saying that for a week, but I think that the opposition really is minimal. When we finally get to a vote, it is going to be overwhelming. I hope those obstructing and delaying the bill will give it up and let us get to the final passage of this important legislation before we leave. I understand there is one outstanding issue remaining on that legislation. Hopefully, it can be resolved by the managers early this afternoon.

In addition to the Internet bill, the Senate may consider the intelligence reauthorization bill, the human services reauthorization bill, under a 30-minute time agreement, and, possibly, the Treasury-Postal Service appropriations bill. The Senate may also begin

consideration of the William Fletcher nomination under the previously agreed to 90-minute time agreement.

At 5 p.m., under a previous order, the Senate is scheduled to resume consideration of H.R. 10, the financial services reform bill, unless another agreement is reached. I hope we can also come to some compromise agreement on that legislation so we can get it completed. It is very important domestically and, as a matter of fact, for our ability to compete in international markets. Members should expect rollcall votes throughout the day and into the evening.

There are a number of meetings going on to resolve issues between the House and the Senate and the administration. I think a lot of good progress has been made in the last 24 hours. I felt like the dam sort of broke yesterday. We have the bankruptcy reform legislation conference report being finished now. The vocational education conference report was completed last night. That was the first time we had a vocational reauthorization in years, and certainly we need to focus on vocational education. That, coupled with the higher education bill that was signed into law 2 days ago, will begin to show that we are committed to working continuously to improve education for our children and for the families of this country in the future.

We are in a position where we are about in final agreement on the WIPO bill, the intellectual property issue, and music licensing.

A number of bills are coming to a conclusion. As soon as conference reports are available, particularly appropriations bills, they will be stuck right into the schedule, and hopefully a quick vote. We will then move with other conference reports. We hope to be able to move some Executive Calendar nominations. But that also will take a lot of cooperation.

I thank the Senators for their assistance at this critical hour.

I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business until 10 a.m. with Senators permitted to speak for up to 5 minutes.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, we are in morning business?

The ACTING PRESIDENT pro tempore. That is correct.

THE PRESIDENT DID THE RIGHT THING

Mr. HARKIN. Mr. President, last evening, President Clinton did the right thing, did the right thing for this country and did the right thing for our farmers and for people who live all across rural America. He did the right thing for farmers who are suffering because of a drastic drop in prices. He did the right thing for farmers who are suffering because of a loss of crop in disaster areas in the South and Upper Midwest. The President did the right thing by vetoing the woefully inadequate farm disaster bill that this Congress passed and sent to him for his signature. Now it is up to us to see what we can do to make that bill better and get it back to the President for his signature.

Rural America needs help. Farmers need assistance. Disaster-hit areas need help. And yet they do not need the woefully inadequate bill that was passed here. I likened the bill that was passed by the Congress as giving a thimbleful of water to a person dying of thirst. It may assuage their thirst momentarily, but it is not going to keep them alive. We need to give those farmers who are dying of thirst out there the adequate water they need to get them through this year and the next to keep them alive.

Mr. President, I was encouraged by what I read in Congress Daily, that the chairman of the House Appropriations Committee, Congressman LIVINGSTON, has said that they expected a veto and that after the veto comes negotiations. I do not have the exact quote, but that is about what he said. I think that gives us some hope that we can work together here, we can negotiate out some differences, and we can come up with a bill that the President will sign and that will, indeed, benefit our producers.

There are some principles that we must maintain, however. First of all, there must be adequate disaster assistance. There needs to be equitable treatment regionally both within the distribution of the disaster assistance and within the overall package of disaster-related, commodity-based assistance. That means it has to be equitable, and it has to be adequate. It does not necessarily mean the dollars have to be spread around evenly. Equitable treatment is the key for farmers who have suffered from natural disasters.

A second principle is that assistance must go to producers who need it. Assistance based on low commodity prices should be delivered to producers suffering from low commodity prices. That is the advantage of the marketing loan proposal that those on our side have advocated. The proposal just to add on some money to this so-called AMTA payment has no relationship to the level of commodity prices. And not all commodity prices are depressed equally or substantially, particularly in cotton and rice. So assistance must have some relation to market conditions.

I always wonder what it is about some of my friends on the other side. They always talk about the market, the market, the market, yet the direct payment that goes out to farmers has no relationship to the market.

Removing the loan rate caps, as we want to do, does have a relationship to the market. If the market price goes up, the exposure to the Government is less and farmers will get their money from the market and not from the Government. Just giving out a direct payment has no relationship to the market whatsoever.

I think a third principle that we must have in any negotiated settlement is assistance to actual producers. Lump cash payments in a fixed amount are less likely to remain in the hands of the actual farmer than is assistance provided in a way that is contingent on market conditions. The additional AMTA payment that is in the vetoed bill is readily identified by landlords who are in a strong position to capture the payment in land rental rates. That is why raising the marketing loans, raising those caps will get to the producers.

Another principle. We must restore the safety net. Farmers are in their current predicament in large measure because the safety net feature of previous farm bills was abandoned in the 1996 farm bill. A set cash payment does nothing to restore the safety net because it is not responsive to market conditions. By contrast, removing loan rate caps would help restore a safety net responsive to market conditions.

Two last and final principles. Some linkage to actual production. The marketing assistance loan is tied directly to actual production. The Republican plan in the vetoed bill would have provided an additional money windfall even though no crop had been produced on the land. Why would we want to do that? Let's have assistance out to farmers who actually produced a crop.

And last, let's have a major measure of fiscal responsibility. This idea of just throwing out another payment to farmers is not fiscally responsible. If commodity prices should rise next year, which we all hope will happen, our plan would cost less than expected. But if the commodity prices rise next year, after the Republican plan payment went out, we would not recapture any of that money. It would be gone. That is why raising the marketing loan caps is, indeed, more fiscally responsible than just giving out a payment.

Mr. President, I believe within those principles there is room for negotiation. I look forward to the negotiations. I hope we can very rapidly come up with a bill that will meet these principles and that the President will sign into law, because our farmers need the assistance, and the disaster areas also need that assistance.

I will yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1999—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the VA–HUD conference report. There are 60 minutes for debate to be equally divided.

The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4194), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1998.)

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. I yield to my distinguished colleague from Maryland for a request.

PRIVILEGE OF THE FLOOR

Ms. MIKULSKI. Mr. President, I ask unanimous consent that during consideration of the report 105–769, that Ms. Bertha Lopez, a detailee from HUD serving with the VA–HUD committee, be afforded floor privileges.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MIKULSKI. Thank you. I yield the floor and look forward to proceeding on our conference.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Missouri is recognized.

Mr. BOND. I thank our distinguished ranking member, Senator MIKULSKI. Before I get into the bill, let me say Senator MIKULSKI and her staff have given us tremendous cooperation, guidance and support. The process is always very difficult in this bill, but it runs much more smoothly because of her leadership, her guidance, and her deep concern for all of the programs covered.

Mr. President, I am pleased to present to the Senate the conference report on the fiscal year 1999 VA–HUD and independent agencies appropriations bill. The conference report provides $93.4 billion, including $23.3 billion in mandatory veterans' benefits. I believe this represents a fair and balanced approach to meeting the many compelling needs that are afforded this subcommittee, particularly in the face of a very tight budget allocation.

The conference report accords the highest priority to veterans' needs, providing $439 million more than the President's request for veterans' programs. Other priorities include elderly housing, protecting environmental spending, and ensuring sufficient funding for space and science.

We did our best to satisfy priorities of Senators who made special requests for such items as economic development grants, water infrastructure improvements, and similar vitally important infrastructure investments. Such requests numbered over 1,000 individual items, illustrating the level of interest and the demand for assistance provided in this bill.

We also attempted to address the administration's top concerns wherever possible, including funding for 50,000 new incremental housing vouchers, funding for the National Service Program at the current year rate, additional funding for the cleanup of Boston Harbor, and $650 million in advance funding for Superfund, contingent upon authorization and reform of the Superfund Program by August 1, 1999.

For the Department of Veterans Affairs, the conference report provides a total of $42.6 billion. This includes $17.306 billion for veterans medical care. That figure is $278 million more than the President's request, and $249 million more than the 1998 level. Thus, we have increased by just about a quarter of a billion dollars the amount of money going to veterans health care above what was available for the past fiscal year. There was a strong consensus in this body, on a bipartisan basis, that the President's request for veterans medical care was inadequate, and that additional funds were needed to ensure the highest quality care to all eligible veterans seeking care.

Funds above the President's request also provided for construction, research, State veterans nursing homes, and the processing of veterans claims. I am confident these additional funds will be spent to honor and care for our Nation's veterans.

In HUD, the conference report provides for the Department of Housing and Urban Development a total of $26 billion. Again, this is $1 billion over the President's request. We were able to provide this significant increase in funding because of additional savings from excess section 8 project-based funds as well as savings from our reform of how HUD conducts its FHA property disposition program.

Because of these savings and reforms, we have been able to increase funding for a number of important HUD programs, including increasing critically needed funding for public housing modernization from $2.55 billion to $3 billion; increasing HOPE VI to eliminate distressed public housing from $550 million to $625 million; increasing the very important local government top priority, Community Development Block Grants from $4.675 billion to $4.750 billion.

We increased HOME funds, providing the flexibility for local governments to make improvements in providing needed housing for low-income and needy residents, from $1.5 billion to $1.6 billion, and we increased funding for homeless assistance from $823 million to over $1 billion, including requirements for HUD, recapturing and reprogramming unused homeless funds.

We also included $854 million for section 202 elderly housing, and section 811 disabled housing. This is an increase of some $550 million over the President's request for the section 202 program.

This reflects the sense of this body, expressed in a resolution jointly sponsored by my ranking member and myself, saying that we could not afford an 80-percent cut in assistance for elderly housing as proposed by the Office of Management and Budget.

I want to be clear that these funding decisions for HUD do not reflect a vote of confidence for HUD. HUD remains a troubled agency with significant capacity problems and dysfunctional decisionmaking. Let me remind my colleagues that HUD remains designated as a high-risk area by the General Accounting Office, the only department-wide agency ever so designated. I am not confident that HUD is making appropriate progress. I also want to warn my colleagues that, while we have provided the additional 50,000 welfare-to-work incremental vouchers that the administration requested, HUD and we are fast approaching a train wreck. And the debris will be on our hands.

Let me call our colleagues' attention to this chart. It shows an explosion. To be specific, in fiscal year 1997 we had to appropriate $3.6 billion in budget authority for the renewal of existing section 8 vouchers. These are the renewals for people who are now receiving section 8 assistance. Because in prior years we had multiyear authorizations, those authorizations are expiring, and just to maintain the section 8 assistance we are providing we had to go up to $8.2 billion this year. We will go up next year to $11.1 billion, the year after $12.8 billion, and by 2004 we will have to find budget authority of $18.2 billion, just to maintain the section 8 certificates, the vouchers for assisted housing for those in need that we already provide.

So, this is a budgetary problem of huge magnitude and it is something that is coming. Unless we are to stop providing assistance for those who need section 8, we are going to have to find in the budget room for that much budget authority. I have asked HUD repeatedly, in hearings before our committee, to address this fiscal crisis. Yet HUD has repeatedly failed to fulfill these responsibilities. This is something this body and the House are going to have to work on next year and the year after and the year after. The problem grows significantly more severe as we move into the outyears.

The conference report, at the request of the House and the leaders of the Housing Authorization Committee in

the Senate—the distinguished chairman of that subcommittee, Senator MACK, will be addressing this later—includes a public housing reform bill entitled the ''Quality Housing and Work Responsibility Act of 1998.'' I congratulate the members of the authorizing committee for making significant and positive reforms to public and assisted housing programs. I believe that, given the legislative calendar and the situation, it was appropriate, with the advice, counsel and direction of the leadership, that we included it.

There are some issues I want to flag now because I think we may want to come back and readdress them, as we do in so many things that we pass in the housing area in this body.

I am concerned that the requirements on targeting might adversely impact the elderly poor. I am concerned about a provision that could allow HUD to micromanage housing choices of public housing families on a building-by-building basis, and I don't agree with the provision that would provide the HUD Secretary with a slush fund of some $110 million.

Most of my concerns, however, relate to provisions that will become effective in fiscal year 2000. I expect that we will continue to review these areas and we will work, as we have in the past, in full cooperation with our distinguished colleagues on the authorizing committees in both the House and the Senate and discuss these further in future bills.

Finally, this appropriations bill provides a significant increase for FHA mortgage insurance. We raised the floor from $86,000 to $109,000 and the ceiling for high-cost areas from $170,000 to $197,000. This is a critical provision. It means that families will have new and important opportunities to become homeowners.

With respect to the Environmental Protection Agency, the conference report provides $7.650 billion for EPA. That is about $200 million more than current year funding. Included in this is the President's full request for the clean water action plan which totals $150 million in new funding, principally for State grants aimed at controlling polluted runoff or nonpoint source pollution. The conference report also provides $2.125 billion for State clean water and safe drinking water revolving funds, an increase of $275 million over the President's request and $50 million over the current year.

Mr. President, I am very proud that we were able to provide this, because I think in every State, if you talk with the people who are actually doing the hard work of making sure that wastewater is cleaned up and that we have safe drinking water, they will tell you that these State revolving funds, which provide low-cost loans and enable communities to take vitally important steps necessary to ensure that they clean up their wastewater and they have safe drinking water, they will tell you that these State revolving funds are absolutely critical for meeting the long-term needs of our communities.

Back to the rest of the bill, for Superfund, the conference report provides $1.5 billion, the same as the current year funding. In addition, there is an advance appropriation of $650 million, contingent upon authorization by August 1, 1999.

Other high priorities in EPA, which we have funded, include particulate matter research, funding for the brownfields at the full request level, providing to the States the tools they need to prevent pollution, cleanup of waste sites and enforcing environmental laws. Almost half of the funds provided in this bill will go directly to the States for these purposes.

For FEMA, the Federal Emergency Management Agency, there is a total of $827 million, approximately the same amount as current year funding, with emphasis on preparing for both natural and man-made disasters.

The conference report includes the President's request of $308 million for disaster relief spending. While there are not any additional funds above the President's request for disaster relief, let me assure everyone that the current balances in the disaster relief fund are sufficient to meet all the needs at this time, including those stemming from Hurricane Georges, as well as the flooding that hit my State over the weekend and resulted in tragic deaths in the Kansas City area, as well as severe damage to homes and businesses.

We all appreciate the good work FEMA has done to help the victims struggling to recover from recent devastation, whether it is hurricanes, floods or tornadoes. Our thoughts and prayers are with the many people who suffered severe losses because of natural disasters.

In order to support efforts aimed at mitigating against future disasters, the conference report provides $25 million for predisaster mitigation grants. These funds are intended to ensure communities will be better prepared and that losses will be minimized when the next disaster strikes. We hope these funds will be well spent to strengthen the Nation's preparedness for natural disasters.

Finally, within FEMA, the conference agreement provides the full budget amount requested by the administration in July for antiterrorism activities. My ranking member and I believe this is vitally important preparation. It is something we need to be looking at in every area, and we are very proud to be able to provide this assistance for FEMA, because this is critical as part of an interagency effort aimed at preparing States and local governments for possible terrorists incidents.

For the National Aeronautics and Space Administration, NASA, the conference report provides a total of $13.665 billion. This is $200 million over the President's request, including $5.480 billion for the international space station and shuttle activities.

We remain very concerned over cost overruns, and the failure of the Russian Government to meet its obligations as a partner in the development and operation of the space station. As a result, this conference report includes requirements for NASA to address Russian noncompliance and includes a provision addressing the need for NASA to explore alternative ways of doing business with the Russians. Again, I thank my distinguished ranking member for her leadership on this issue.

For the National Science Foundation, the conference agreement provides $3.6 billion for NSF. This is $242 million above the enacted level for the past year. Included in this is $50 million for the plant genome program. Mapping the significant crop genomes is vitally important to the future of agriculture and to feeding our country and to feeding the hungry people of the world. This is an increase of $10 million over last year's level and the initial phases of what I believe will be a significant scientific breakthrough.

Before I yield to my colleague from Maryland, I do want to take this opportunity to talk about a crisis that is wreaking havoc throughout our country. That crisis is in Medicare home health benefits. They are in severe jeopardy.

The Health Care Financing Administration implemented a home health interim payment system, the IPS, which hits hundreds of home health agencies, many of which are small, freestanding providers, and has been forcing them out of business.

In Missouri alone where we had last year 230 home health care agencies, 50 agencies have already shut their doors entirely or have stopped accepting Medicare patients. One of them is the largest program in the State, the St. Louis Visiting Nurses Association, but many of them are small businesses that provide vitally needed health care services. It may be in rural areas or it may be in the inner cities, but they are serving some of the most deserving, poor elderly and disabled in our country.

The agencies that are being hit are those that serve the most complex cases, the ones with the most difficult challenges. Some parts of Missouri are losing their only source of home health care.

My hometown of Mexico, MO, has a small rural hospital. It is the Audrain Medical Center. We are very proud of it. But recently I received a letter from David Neuendorf, the medical center's chief financial officer, describing the difficulties they are facing. He stated the following:

> In Mexico the HealthCor, Beacon of Hope, and Homecare Connections agencies have closed. Other firms headquartered elsewhere have closed their Mexico offices. People who need home care in this area are simply not going to be able to get it in the future. When

they become sick enough they will end up in the hospital where they will receive more expensive treatment.

Mr. President, in Missouri we have a well known phrase: ''Show me.'' Mr. President, people in Missouri have shown me that the interim payment system is denying access to critical home health services. The IPS is the worst case of false economy I have ever seen. If the elderly and disabled cannot get care in the home, what is going to happen? They either will wind up in the emergency room very sick or they will go into institutionalized care, going into expensive nursing homes or even hospitals, or the patients simply will not get care at all.

One agency chief officer who testified before the Small Business Committee exemplifies the problem. She tells me she provides care to the most complex cases, the most difficult ones to serve in a central city area. And if this system and the proposed cuts go through, she could go out of business, and of the 350 patients she has, almost half of them would have to go immediately into nursing homes.

This means that not only will Medicare costs rise, but there will be an explosion in State and Federal Medicaid budgets. We are going to have to pay for these poor, elderly, and disabled who are very sick. If we do not take care of them in the home health setting, we are going to take care of them in less convenient, less comfortable ways for them but far more expensive ways for us.

We must demand this insane, inequitable, and punitive system be corrected before we adjourn. And there are many proposals floating around. I believe Members on both sides of the aisle of this body know stories about how serious this crisis is. Some of them provide needed relief to home health agencies, those whom they serve. Some of them merely add a few lifeboats to a sinking ship. But it is clear one important consideration is missing. It is imperative we restore access to home health care for medically complex patients, especially those in center cities and rural areas. We cannot just reshuffle the deck and cause losses to vulnerable patients.

Mr. President, I would have addressed this under the VA-HUD bill, under the FEMA's emergency budget. Unfortunately, home health care does not qualify for disaster relief. But let me assure my colleagues, that the human disaster of failing to address this home health care problem is going to be as severe, if not more severe, than many of the tragic natural disasters we address in FEMA.

Mr. President, to sum up, I am very proud of the work that we have been able to accomplish. I appreciate once again the work of my distinguished colleague. I will recognize others who have worked on this later, but now it is my pleasure to defer to the distinguished Senator from Maryland.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you very much, Mr. Chairman and Mr. President.

I am really proud once again to come to the floor with my colleague, Senator BOND, to bring to the Senate's attention the 1999 VA-HUD conference report and urge that we move quickly to vote on and pass what I believe is a very solid report. This is a strong conference report, and I believe it is one which will be signed by the President of the United States. And why? Because it meets the day-to-day needs of the American people as well as the long-range needs of the United States of America.

It provides a safety net for our seniors. It gets behind our kids. It invests in science and technology and makes our world safer. It meets compelling human needs and at the same time makes public investments in Federal Laboratories that will come up with the new ideas for the new products, for the new jobs, for the 21st century.

Let's talk about a safety net for seniors. We have often said to our veterans that we are a grateful nation for the sacrifice that they have made in the wars, and many of them bear the permanent wounds of war. But I believe the way a grateful nation expresses its gratitude is not with words but with deeds. That is why I am so pleased that we are providing in the VA medical care account $17.3 billion to meet that need. This will ensure that our veterans will receive quality medical care and that whenever they enter a VA hospital or an outpatient clinic, promises made will be promises kept.

At the same time, we provided $316 million for VA medical research. VA medical research is different from NIH research. Building on basic science, it actually does research in hands-on ways to improve clinical practice—both in acute care as well as in prevention and home health care. This means that this will focus on those diseases that ravage our veterans—like diabetes and like prostate cancer as well as the Gulf War Syndrome.

In addition to what we have done for senior citizens in the veterans health care program, we also worked to make sure that there is a safety net for seniors in our housing for the elderly. Misguided budget cutters sent a budget to us cutting housing for the elderly by a half a billion dollars, and at the same time they wanted to convert those funds to vouchers. On a bipartisan basis, Senator BOND and I said that was absolutely unacceptable.

First of all, the Housing for Elderly Program is one of the most popular programs within HUD. And it is often run by nonprofit organizations, many of whom are faith-based, like Catholic Charities and Associated Jewish Charities in my own State, not only taking taxpayers' dollars and adding housing for the elderly but value adding to that. That is why we restored that cut of a half-billion dollars, to make sure that the funds are there.

We also rejected their approach to providing vouchers. Senator BOND and I really did not believe that an 80-year-old frail, elderly woman with her walker should be walking up and down the streets of St. Louis, MO, or Baltimore, MD, or any of our communities, trying to get into an apartment that might not meet the needs of the elderly, and certainly the frail elderly.

So we got rid of the misguided budget cutting and also the poor policy thinking that went into it. We are challenging HUD, however, to come up with new thinking in their housing for the elderly to develop new approaches for our seniors, and particularly those that are aging in place. There will be a demonstration project run by Catholic Charities just to do that.

At the same time, in this subcommittee, we showed our commitment to the next generation in terms of our children. Within the National Science Foundation account, we have increased the funding for the training of science teachers as well as expanding the informal science education programs to reach beyond the classroom to our children to encourage them to study math, science, and engineering.

Also, we have added assistance for the historically black colleges, as well as ones serving Hispanic institutions, to develop important laboratory infrastructure so that they can modernize their facilities, so they can provide the best quality education available.

In addition to our educational efforts in terms of our children, we also wanted to look out for their health. That is often in the Labor-HHS appropriation, but there is a secret here often in housing, in old housing in slum neighborhoods, which is that they are loaded with lead. Lead constitutes one of the biggest problems facing many of the children in my own hometown of Baltimore. And we have taken Federal dollars and increased the funding for our lead abatement program. Again, we have worked on a bipartisan basis.

Scientists and physicians at Johns Hopkins point out when a child comes into Hopkins and his or her blood is loaded with lead, the very nature of detoxification is not only painful, but it often costs in the Medicaid budget thousands of dollars. The impact of lead not only can lead to death but severe impairment of intellectual ability. By getting the lead out of our housing and getting the lead out of our bureaucracy, we will make sure we get the lead out of our children. We are very pleased to have been able to do that.

While we are looking now to the day-to-day needs of the American people, we know we have to invest in science and technology. Again, Senator BOND and I believe that public investments in science and technology will lead to the new ideas, the new products and the new jobs for the 21st century. That is why we have provided significant

funding for critical science and research at the National Science Foundation and the National Space Agency. This legislation will provide $3.6 billion in the National Science Foundation account. This is an 8 percent overall increase in funding.

The NSF has peer review programs focusing on developing cutting-edge science and technology. We want to, again, work to make sure that this money is used wisely. We believe that the National Science Foundation is on track.

In addition to that, this appropriation provides $13.6 billion for the National Space Agency. It will spur technology development, as well as look for the origins of the universe.

To my colleagues in the Senate and to those also watching, while we were working on the funding for NASA we recognized a great American hero, Senator JOHN GLENN. At the request of his colleague from Ohio, Senator DEWINE, we have renamed the NASA Lewis Research Center in Cleveland the ''John Glenn Research Center,'' which we think is an appropriate recognition. We thank the junior Senator from Ohio for making that request.

While we are working on NASA, we have been troubled about the funding for the space station and also the failure of the Russian Government to deliver its promises. We have instructed NASA to take a look at how we are going to get value for taxpayers' dollars and how we are going to get technology for taxpayers' dollars. After rather firm conversations with the National Security Advisor of the United States, as well as the Administrator, we believe we have language in our appropriations that will help us get both value and technology for our cooperation in this effort.

We are also working on a safe world. We have funded the Environmental Protection Agency to clean up our environment and also take those steps that are necessary to prevent increased environmental degradation. One of the efforts, of course, is in brownfields, which we hope will be a new tool to be able to clean up those contaminated areas and turn a brownfield into a ''green field'' for economic development.

We continue to be troubled about the lack of an authorization for Superfund. We will fund Superfund at last year's level but we encourage the authorizers to be able to move ahead and pass an authorization. We have an additional $650 million included, contingent on a reauthorization by August 1. Those are the things we believe will truly be able to help clean up our environment and do preventive work.

Certain aspects in this legislation regarding EPA are important to my home State of Maryland. In Maryland, we consider good environment is absolutely good business. That is why we thank, once again, Senator BOND for work in continuing the funding for the cleanup and revitalization of the Chesapeake Bay. The bay is important because it provides tremendous jobs in our State, from the watermen who harvest the different species, including the crabs and oysters of the bay, to other small businesses that work on the bay.

All of my colleagues in the U.S. Senate know we were hit by the terrible situation of pfiesteria—this ''X-like'' organism that sits in the mud, mutates 24 times, and then wreaks havoc with our fish. What our legislation provides is important research in pfiesteria. We hope to be able to come up with solutions that will be important not only for Maryland and the causes of it, but also that will help other parts of the country, like North Carolina, and rivers that are affected by animal wastes, with dire consequences.

We are also very pleased the Federal Emergency Management Administration has been funded. We will meet, of course, the 9–1–1 request of the United States of America, but I believe in FEMA we provided the three ''R's.'' We have funded readiness; we have funded response; and we have also funded both rehabilitation, but more importantly, prevention. This has been the hallmark, I think, of FEMA during the last 5 years, to do training at the local community and throughout this Nation, to be ready for those disasters that normally would affect a particular region, but at the same time the readiness help to move to a quick response. Often after a disaster we can't restore it to its old condition or even better, and, therefore, we need to look at ways to prevent disasters.

There is also another disaster that threatens the United States that is very deeply troubling to me. That is the whole issue of threats of terrorist attacks on our own United States of America. I know at the highest level there are coordinated task forces, particularly from our military, but within our legislation we made sure we fund FEMA's effort to do the training necessary to deal with attacks, particularly of bioterrorism and chemical weapons. We regard this as a very important effort.

I want to mention before I close the very close cooperation we have had in this bill with the authorizers on Housing and Banking. I particularly acknowledge the role of my senior Senator, Senator PAUL SARBANES, and Senator MACK of Florida. They really worked hard this year to come up with a new authorizing framework for public housing. I believe that they did it. They worked on economic integration of public housing so it doesn't remain ZIP Codes of pathology. We have worked together in our legislation. We are taking their authorization and incorporating it here to make sure that there are new housing resources. In our bill there will be 50,000 new vouchers designed for welfare-to-work, to make sure that welfare is not a way of life but a tool to a better life, and that public housing is not a way of life but a tool to a better life. We have worked cooperatively with them, and we have worked long and hard on our bill to eliminate outmoded public housing rules that only hold people in place, and often have kept people in poverty.

Also, this legislation will extend the life of HOPE VI. HOPE VI is a program that I helped develop that not only tried to eliminate the concentrations of poverty and bring down the old walls of public housing, but to create new hope and new opportunity. I am so pleased the authorizers have spent over 2 years looking at this to come up with a new framework.

I know my own colleague, Senator SARBANES, is trying to get here to speak on this bill. If he doesn't, I know he will speak later. We were both due at a breakfast meeting in Baltimore and he covered that so I could be here to move my bill. How I like working as a team. It is really a great pleasure to me to have my senior colleague, PAUL SARBANES, on the Budget Committee, as well as on the Housing and Banking where we have worked as a team to look at the day-to-day needs of people.

He took this concept of what was happening in public housing and delved into it to come up with new ideas and a new framework. He had the support of Senator MACK, who I know has gone into public housing, talked with residents, listened to the best ideas of foundations and think tanks and also the needs of residents, as did my own senior colleague. I wish all of my colleagues could enjoy the relationship with their colleague within my State as I do. Senator SARBANES and Senator MACK have come up with a new framework. They pushed us to the wall to come up with new funding. We had to forage for the funds, but we were able to do it. We truly hope this will create hope and opportunity.

In addition to that, we are particularly appreciative of the conference report to maintain the funding for national service, which others had wanted to eliminate.

We want to thank them for that because that is also another tool for creating hope and opportunity. So that is my perspective on the VA-HUD bill. Once again, working on a bipartisan basis, we show that we can meet the day-to-day needs of our American people, as well as the long-range needs of the United States of America. I thank Senator BOND and his staff for, once again, the cooperative and bipartisan way that they have worked with my staff and myself. Senator BOND, I thank you for all of the courtesies, the collegiality, and the consultation in which we engaged on this bill. I thank you for really the professionalism of your staff, Jon Kamarck and Carrie Apostolou, who really helped me in many ways to come up with good ideas and worked with you for good solutions.

I also thank my own staff, Andy Givens and David Bowers, and Bertha Lopez, a detailee from HUD who has been with us, who has worked hard to

make sure I could fill my responsibilities. I thank them for their hard work and effort.

In closing, I also want to say that over on the House side, another member of VA–HUD is retiring. We pay our respects to Congressman LOUIS STOKES, who has also really helped move this bill forward.

So, Mr. President, that is my perspective on the bill. In a few minutes, I know we will be moving toward a vote. I urge every single Senator on my side of the aisle to support this bipartisan effort to move the appropriations and really encourage all others with outstanding appropriations to act in the same bipartisan fashion that we have.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I join with my colleague from Maryland in expressing our appreciation to the House authorizing committee. She mentioned Senator SARBANES. I want to express my sincere appreciation to Senator MACK. They spent 4 years in ''legislative purgatory'' attempting to come up with a resolution of these very difficult and important issues.

Mr. ALLARD. Mr. President, I wish to thank the conference committee members, and in particular the chairman of the VA/HUD Appropriations Committee, Senator BOND, and the Chairman of the Housing Subcommittee, Senator MACK. I appreciate their working with me to include two provisions in public housing reform language which I feel are important.

We have worked together to include a provision to allow vouchers for crime victims. This would create an opportunity for individuals who are living in public housing units the chance to leave a bad situation if they are a victim of a crime.

Public housing residents could receive a housing voucher if they were the victim of a crime of violence that has been reported to law enforcement.

These individuals would be empowered with the choice of where they want to live and are given the freedom to determine what surroundings they desire. I strongly believe that people should have the option of vouchers when their housing is unsafe.

We have also included what I hope will be a thorough study by the General Accounting Office of the full costs of each federal housing programs. I have been dismayed by the lack of data on the cost and benefits of public housing, section 8, and voucher programs. We need better data.

Once we determine what these programs actually cost on a unit by unit basis we can better determine the best approach. I personally prefer vouchers, but I want a complete review of all these programs to help us determine the most cost effective means of providing government assisted housing as we enter the 21st century.

Again, I would like to thank the chairmen and their staff for completing action on public housing reform legislation and look forward to working with them in the future.

CLARIFYING THE STATEMENT OF THE MANAGERS ACCOMPANYING THE VA–HUD CONFERENCE REPORT

Mr. LAUTENBERG. Mr. President, I want to clarify a section in the statement of the managers accompanying the VA–HUD conference report. The language urges EPA not to spend any funds or require any parties to dredge contaminated sediments until completion of a National Academy of Sciences report on dredging technology. The report may take two years to complete. It is my understanding that the language is not intended to limit EPA's authority during the next two years with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found that dredging is an appropriate response action.

Mr. BOND. The Senator is correct. The statement of the managers is not intended to limit the EPA's authority with respect to dredging contaminated sediments that pose a substantial threat to public health or the environment where EPA has found, consistent with its contaminated sediment management strategy, that dredging is an appropriate response action.

ECONOMIC DEVELOPMENT INITIATIVES

Mr. SPECTER. Mr. President, I have sought recognition to thank Chairman BOND for his inclusion of funding within the Economic Development Initiatives account for three important projects in Pittsburgh, Wilkes-Barre, and Philadelphia, Pennsylvania that I requested.

The conference report also includes $2 million for the City of Pittsburgh to redevelop the LTV site in Hazelwood, Pennsylvania. These funds can be used by the city to clean up and prepare the site for eventual reuse. One possibility being contemplated in the area is an effort to attract the Sun Oil Company to build a new coke facility which create hundreds of new jobs.

I am pleased that we have been able to increase the level of funding in the bill from $750,000 to $1 million for the downtown revitalization project in Wilkes-Barre which is also a top priority for Mayor Tom McGroarty and Congressman PAUL KANJORSKI.

I am also pleased that the conference report includes $50,000 for a project in Central and South Philadelphia, which is plagued with an average annual family income of $7,600, a 45 percent unemployment rate, and a 50 percent high school drop-out rate. These funds are intended to provide initial resources for the development of a job training and business center to generate employment in this section of Philadelphia. The renewal project is spearheaded by Universal Community Homes, a not-for-profit community development corporation which has a strong presence in the city, and which has received grants from the Department of Housing and Urban Development for housing and other initiatives which are geared toward improving the quality of life for low-income families. In January of this year, I had the opportunity to visit Universal Community Homes to tour their facilities. More importantly, I met with individuals who directly benefit from the programs and services delivered by Universal Community Homes. Members of the media and community leaders were also present to bring to my attention that the South Central Philadelphia sections of the city are in critical need of a job training and business center.

I take this opportunity to clarify with Chairman BOND that it is the conferees' intent that Universal Community Homes is the appropriate applicant for the EDI grant for Central and South Philadelphia.

Mr. BOND. I thank my colleague for his comments and have appreciated his input on worthwhile projects in Pennsylvania. I agree with his understanding that the conferees intend that Universal Community Homes is the appropriate applicant for the funds provided for a job training and business center Central and South Philadelphia.

NEW ENGLAND HEALTH SYSTEM

Mr. LIEBERMAN. Mr. President, I rise with my colleague from Connecticut for the purpose of a colloquy with the Chairman and the Senator from Vermont. Is the Chairman aware of the financial constraints facing the veterans health system in New England's VISN 1?

Mr. BOND. Yes, the Chair is aware of the financial constraints in New England.

Mr. LIEBERMAN. Mr. President, news accounts have indicated that New England's veteran health care system will suffer additional cuts despite recent efficiency and consolidation efforts. Veterans could find themselves cut off from health services throughout the region. Is the Chairman aware that without additional dollars administrators will have to cut deeply into valuable health care programs and basic administrative support services?

Mr. BOND. I am well aware that the New England region has had to make significant reductions in health care costs, in part because of the VA funding formula.

Mr. DODD. I know the Chairman knows that the veterans in VISN 1 live in a region that stretches from Connecticut to Maine. The budget for our region's medical care has dropped from $854 million in fiscal year 1996 to $809 million in fiscal year 1998. I have been informed by the Department of Veterans Affairs that the New England region will endure yet another budget cut in fiscal year 1999. I hope that the Appropriations Committee will take note of the impact these reductions are having on facilities across New England.

Mr. LEAHY. Mr. President, as is the Chairman, I am a member of the VA/

HUD Subcommittee that funds the Department of Veterans Affairs. He knows my personal concern about the situation facing our veterans in New England. The Appropriations Committee added $278 million in this conference report for veterans medical care, a significant increase over the President's budget request. It was my understanding that a portion of this increase will go to New England. Am I correct in that assumption?

Mr. BOND. The Senator from Vermont is correct. All networks will receive some part of these additional funds, and these funds will help New England and all regions address some critical funding issues.

Mr. LEAHY. I look forward to working with the Senator from Missouri on this issue in the coming year, and I thank him for his leadership on all issues affecting our nation's veterans.

Mr. LIEBERMAN. As did my colleague from Vermont, I thank my friend from Missouri for his consideration on this issue of profound importance to New England veterans.

NOTICE OF PREPAYMENT

Mr. WELLSTONE. Mr. President, I rise today to speak on an important provision of the FY1999 VA/HUD appropriations bill. Thanks to the hard work and grassroots efforts of tenants and housing advocates across the country, this VA/HUD bill includes a 5 month minimum requirement to notify tenants and communities of an owner's intent to repay his or her federally assisted mortgage.

This provision helps tenants of Section 236 and Section 221(d)(3) housing as created by the National Housing Act for federally assisted, privately owned affordable housing. Under the Section 221 program, the federal government insures the mortgages on certain rental housing; under the Section 236 program, the federal government subsidizes the interest payments that owners of rental housing made on the mortgages. Both of these programs offer the security of a federal subsidy for building owners in return for their maintaining these buildings as affordable housing. Regulatory agreements signed between HUD and the building owners restrict the rents which could be charged on the units within the building so long as the mortgage is insured or subsidized by HUD. To be eligible, an owner signs a 40 year mortgage; however, the owner can prepay the mortgage or end the contract after 20 years and has the ability to remove that building from the pool of affordable housing.

Twenty years have now passed, and the legislative housing initiatives of the 1980s have failed to curb the collapse of this once sturdy guarantee of affordable housing for low-income families and individuals. One major provision is that owners of a Section 236 project simply need to give their tenants a 30-60 day notice that the property is under the prepayment process. All too often the prepayment of the mortgage by the owners results in a tremendous loss to the tenants of that project. Without the federally backed restriction on rents that can be charged, the prepayment of the mortgage opens the door to new owners who on average have increased the tenants monthly rent by 49%.

This increase in rent forces low-income tenants out of their homes. This increase in rent forces these tenants to search for new housing, often in rental markets with exceptionally low vacancy rates. At the same time the supply of low-income housing takes a big hit, fewer and fewer units are available with each prepayment of Section 236 housing for the low-income families in desperate need of adequate housing.

Mr. President, the Senate version of the VA/HUD bill included a provision to give tenants of Section 236 housing a fair notice—one full year—of the owner's intent to prepay the mortgage on the building. This critical one year notice was designed to accomplish two goals. First, it would have given the tenants a notice of the owner's prepayment intentions. For some tenants, especially those living in the Minneapolis/St. Paul Metropolitan area, finding housing has been extremely difficult. The vacancy rate is at 1.9%. It was simply unreasonably to expect those tenants to find alternative housing within only 30 days with such a low vacancy rate. In fact, it has been nearly impossible for low-income tenants and families to find adequate housing in such a short time in such a tight housing market. Secondly, the one year notice would have given a community the critical time necessary to begin to formulate options to keep that building available for those in need of affordable housing. I am pleased that the Senate is on record supporting the need for a fair notice to tenants.

Unfortunately, the conference report does not include the full extent of my provision. The one-year notice period was reduced in the VA/HUD Conference Committee. It was reduced to not shorter than five months, but not longer than a nine months notice by owners. In addition, the provision now includes an enactment date effective 150 days after passage of the bill. Clearly, I am not enthusiastic about this revision to the notice requirement, but it is certainly an improvement over the current requirement of 30–60 days. As a result, the shorter time may only buy additional time for the families facing the increase in rent and their eventual move to alternative housing. I fear that the 5–9 months will not accord non-profits and communities with the necessary time to purchase the building and maintain those units as affordable housing.

However, this revised provision does put the right foot forward. Not only is it a public acknowledgment that Congress sees the prepayment of Section 236 and Section 231 housing as a potential crisis facing the market, it gives tenants and communities the framework to find affordable alternatives for low-income families. This is only the first step. To truly restore fairness to the housing situation, tenants should have a longer period of time—one year or longer advance notice. The Senate is on record in support of a one-year notice and the next Congress should move to increase the notice period again. I am proud of the work that has been done, but I believe we have to do more.

I thank my colleagues for supporting this important provision. While the revisions in the conference report may be the best possible solution to the crisis facing the tens of thousands of families dealing with the prepayment of their building, it does provide a necessary improvement to existing law.

Mr. KERRY. Mr. President, I rise in support of the VA–HUD Appropriations bill. I thank Chairman BOND and Senator MIKULSKI for their success in bringing this bill to the floor with such widespread support. Balancing the many competing needs in an appropriations bill is never an easy task, and Senators BOND and MIKULSKI and all of the other conferees should be proud of the work they have done.

As ranking member of the Subcommittee on Housing Opportunity and Community Development, I am particularly pleased with the appropriations for the Department of Housing and Urban Development. The Fiscal Year 1999 appropriations for HUD is the agency's best in the past 10 years. Roughly $2 billion more has been appropriated for Fiscal Year 1999 than was made available in 1998. These gains would not have been possible without the tireless efforts of Secretary Cuomo, who delivered a strong and thoughtful budget request to the appropriators last January.

The Fiscal Year 1999 HUD appropriations bill symbolizes a renewed commitment to meet our nation's severe housing shortages. Today, only about one out of every 4 households in need of housing assistance receives it. Of the roughly 12 million families that need housing assistance but do not receive it, almost half have worst case housing needs. These families are paying more than half of their incomes every month in rent, or live in physically substandard Housing, or both.

The appropriations bill will help address this need by funding 50,000 new section 8 vouchers, many of which will be targeted to people moving from welfare to work. These vouchers establish a crucial link between housing and employment opportunities, while simultaneously helping those who are making a concerted effort to get off of welfare assistance. They are important tools whose significance cannot be overstated given the uncertainty of welfare reform.

Furthermore, this bill changes current law so that housing authorities no longer have to hold off on reissuing vouchers and certificates for a period of three months upon turnover. Repealing this delay will provide section 8

vouchers to as many as 40,000 more low-income families each year. I commend the appropriators for recognizing the need for this resource, and implementing this important change.

The conference report also reaffirms our nation's commitment to homeownership by expanding the FHA single family mortgage insurance program. We are currently seeing record levels of homeownership in this country, and HUD should take great pride in this accomplishment. But not all of those who qualify for homeownership are afforded an opportunity to purchase a home in the neighborhood of their choice. The Fiscal Year 1999 appropriations bill will help address this inequity by raising the FHA loan limits in both high cost urban areas and lower cost rural areas. These new loan limits will enable roughly 17,000 additional families to become homeowners each year.

The conferees are also to be commended for increasing the levels of funding for a number of important HUD programs. Funding for the CDBG program, the HOME program, the public Housing capital fund, the HOPE VI program, the homeless assistance fund, Fair Housing initiatives, HOPWA, Housing for Elderly and Disabled, and the Lead Hazard Abatement program have been significantly increased for Fiscal Year 1999. These funding levels, many of which are higher than the Administration's request, demonstrate the appropriators' commitment to supporting housing and economic development initiatives despite other competing needs contained in this appropriations bill.

I am especially pleased that the appropriators have chosen to fund the Youthbuild program at $42.5 million for Fiscal Year 1999—$7.5 million over what was enacted in 1998. Youthbuild, which I helped pass into law, provides on-site training in construction skills, as well as off-site academic and job skill lessons, to at-risk youth between the ages of 16 and 24. Approximately 7,300 young people have participated in Youthbuild programs to date, and many more-at-risk youth will be able to benefit in the future from the increased resources that have been devoted to this program.

Mr. President, I would also like to express my support for the public housing reform act which was attached to the conference report. As ranking member of the Subcommittee on Housing Opportunity and Community Development, I have worked closely with Senator MACK, Senator SARBANES, Secretary CUOMO, Representative KENNEDY and Representative LAZIO to develop this compromise measure. I am very proud of the final product.

The public housing reform act successfully achieves a delicate balance: it deregulates public housing authorities while simultaneously requiring them to better the lives of the residents they serve. For instance, the reform measure permanently repeals Federal preferences, which had the unintended consequence of concentrating poverty in public housing developments. The bill allows PHAs to develop their own preferences, including a preference for working families, but requires that at least 40 percent of all public housing units and 75 percent of all section 8 units that become available each year be provided to people making below 30 percent of area median income. These protections, which I fought very hard for on the Senate floor and which are better than current law, will benefit residents at all income levels by facilitating the creation of mixed income developments.

The value of mixed income developments cannot be overstated. Working families stabilize communities by offering hope and opportunity in environments of despair. In recognition of this important principle, the reform bill will require housing authorities to develop plans for the economic desegregation of their distressed communities. Each PHA must develop their plan in consultation with its residents, and all plans will be submitted to HUD for approval. The economic desegregation plan was incorporated into the bill at the strong urging of Secretary Cuomo, and I am confident that HUD officials will be committed to making this provision work.

The Reform Act eliminates many burdensome requirements for housing authorities. One-for-one replacement rules, which prevented PHAs from demolishing vacant public housing projects and building lower density developments, have been repealed. Total development costs have been revised to allow housing authorities to construct more viable communities. And PHAs will be permitted to use their Federal funds in a more flexible manner, including investment in mixed finance developments that attract private capital.

But with this freedom comes a new responsibility: housing authorities must involve residents in the decisions that will affect their lives. The Reform Act will empower residents in important ways. They will sit on PHA boards, they will participate in the PHA planning process, and they will be offered greater opportunity to manage their own developments or solicit alternative management entities.

Other provisions in the public housing reform act will benefit residents more directly. For instance, the bill includes a mandatory earned income disregard so that public housing residents who are unemployed, or who have been on welfare assistance, will not be charged any additional rent for a one year period after finding a job. The bill permits and encourages PHAs to establish escrow accounts for residents—accounts which residents can use to fund homeownership activities, moving expenses, education expenses, or other self sufficiency initiatives. The bill also retains the Tenant Opportunity Program as a separately funded grant program, and mandates that at least 25 percent of available funds under this program be distributed directly to qualified resident organizations.

The public housing bill also makes a real commitment to expanding homeownership opportunities for low income Americans. PHAs will now be permitted to use a portion of their capital funds in support of homeownership activities for public housing residents, and families can now use their Section 8 vouchers to help cover the cost of mortgage payments.

In short, the Public Housing Reform Act will go a long way towards improving the lives of the millions of Americans who are receiving Federal housing assistance. It is a nice complement to the funding increases contained in the rest of the VA–HUD bill—increases which will help many more Americans who are in dire need of housing assistance. I urge all of my colleagues to show their support for both of these important initiatives by voting in favor of the VA–HUD conference report.

Mr. DOMENICI. Mr. President, I rise in strong support of the conference agreement on H.R. 4194, the VA–HUD appropriations bill for 1999.

This bill provides new budget authority of $93.3 billion and new outlays of $54.0 billion to finance operations of the Departments of Veterans Affairs and Housing and Urban Development, the Environmental Protection Agency, NASA, and other independent agencies.

I congratulate the distinguished subcommittee chairman and ranking member for producing a bill that not only is within the subcommittee's 302(b) allocation, but that also can be signed by the President. When outlays from prior-year BA and other adjustments are taken into account, the bill totals $91.9 billion in BA and $102.1 billion in outlays. The total bill is exactly at the Senate subcommittee's 302(b) nondefense allocation for budget authority and is under the outlay allocation by $197 million. The bill is exactly at the defense allocation for both BA and outlays.

I note that this appropriations bill does include significant authorizing legislation, including a major reauthorization of public housing programs, and that some of the provisions have a revenue impact which will go on the paygo scorecard.

Mr. President, I ask unanimous consent to insert into the RECORD a table displaying the Budget Committee scoring of the conference agreement on H.R. 4194.

There being no objection, the data was ordered to be printed in the RECORD, as follows:

H.R. 4194, VA–HUD APPROPRIATIONS, 1999—SPENDING COMPARISONS—CONFERENCE REPORT

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
Conference Report:					
Budget authority	131	69,914		21,885	91,930

H.R. 4194, VA–HUD APPROPRIATIONS, 1999—SPENDING COMPARISONS—CONFERENCE REPORT—Continued

[Fiscal year 1999, in millions of dollars]

	De-fense	Non-de-fense	Crime	Man-datory	Total
Outlays	127	80,364		21,570	102,061
Senate 302(b) allocation:					
Budget authority	131	69,914		21,885	91,930
Outlays	127	80,561		21,570	102,258
1998 Enacted:					
Budget authority	131	69,286		21,332	90,749
Outlays	139	80,250		20,061	100,450
President's request:					
Budget authority	131	69,957		21,885	91,973
Outlays	127	81,000		21,570	102,697
House-passed bill:					
Budget authority	130	70,899		21,885	92,914
Outlays	126	80,373		21,570	102,069
Senate-passed bill:					
Budget authority	131	69,855		21,885	91,871
Outlays	127	80,653		21,570	102,350
CONFERENCE REPORT COMPARED TO:					
Senate 302(b) allocation:					
Budget authority					
Outlays		−197			−197
1998 Enacted:					
Budget authority		628		553	1,181
Outlays	−12	114		1,509	1,611
President's request:					
Budget authority		−43			−43
Outlays		−636			−636
House-passed bill:					
Budget authority	1	−985			−984
Outlays	1	−9			−8
Senate-passed bill:					
Budget authority		59			59
Outlays		−289			−289

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions. Prepared by SBC Majority Staff, 10/07/98.

PROVISIONS IN THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

Mr. MACK. Mr. President, I would like to enter into a colloquy with the distinguished ranking member of the Banking Committee, Senator SARBANES, to clarify various provisions in the Quality Housing and Work Responsibility Act of 1998 and discuss the understandings reached among conferees regarding these provisions.

Section 508 requires a disregard of earned income under some circumstances, including persons who obtain employment after one year of unemployment. The rules defining ''unemployment'' for this purpose should provide sufficient flexibility so that a family member who may have a brief, temporary period of employment during the preceding year would not be ineligible for the disregard. At the same time, the rules must not encourage households to change their employment patterns to take advantage of the disregard.

Section 519 provides guidance for a new Operating Fund formula, including that agencies will ''benefit'' from increases in rental income due to increases in earned income by families in occupancy. The extent of this benefit will be determined in the negotiated rulemaking on the Operating Fund formula. More generally, the Operating Fund formula should not be skewed against or discourage mixing of incomes in public housing that is consistent with the bill's objectives. With respect to the Capital Fund formula, the possibility of having an incentive to encourage agencies to leverage other resources, including through mixed-finance transactions, should be considered during the negotiated rulemaking process.

Section 520 amends the current definition of total development costs, but retains the current law directive in section 6(b)(2) of the United States Housing Act that these guidelines are to allow publicly bid construction of good and sound quality. In the past, HUD has not interpreted this reference in a way that allows for sufficiently durable construction, of a nature that will reduce maintenance and repair costs and will assure that public housing meets reasonable community standards. The Department should interpret this section as requiring the use of indices such as the R.S. Means cost index for construction of ''average'' quality and the Marshal & Swift cost index for construction of ''good'' quality.

Where a family is relocated due to demolition or disposition, voluntary conversion of a development to tenant-based assistance or homeownership (sections 531, 533 and 536), the family must be offered comparable housing that is located in an area that is generally not less desirable than the location of the displaced resident's housing. For purposes of this provision, the phrase ''location of the displaced resident's housing'' may be construed to mean the public housing development from which the family was vacated, rather than a larger geographic area.

Where a family is relocated due to demolition or disposition, voluntary or required conversion of public housing to tenant-based assistance or a homeownership program (sections 531, 533, 536 and 537), relocation may be to another public housing unit of the agency at a rental rate that is comparable to the rental rate applicable to the unit from which the family is vacated. However, this requirement does not mean that the rental rate always must be exactly the same. Specifically, if the agency has exercised its discretionary authority in the initial unit to charge less than thirty percent of adjusted income and that authority would be inapplicable to or inappropriate for the new unit, the comparable rent could be a rent that would apply if this discretionary authority had not been exercised (i.e., up to thirty percent of adjusted income).

With respect to public housing demolition (section 531), the conference report does not include a provision from the Senate bill that would deem applications approved if HUD did not respond within 60 days. However, HUD is urged to continue processing applications responsibly and expeditiously. In the same section, references to demolition or disposition of a ''project'' may be applied to portions of projects where only portions are undergoing demolition or disposition.

In the provisions for voluntary or required conversion of public housing to vouchers (sections 533 and 537), residents of affected developments are to be provided notification that they can remain in their dwelling unit and use tenant-based assistance if the affected development or portion is to be used as housing. In many such instances, the development may be undergoing rehabilitation, reconfiguration or demolition and new construction. If so, the resident would be entitled to stay in the same development and use tenant-based assistance, but not necessarily the same dwelling unit.

The bill provides for the possibility of transfer of housing from an agency to an eligible management entity due to the mismanagement of the agency (section 534). Such mismanagement may relate to a single housing development, rather than more widespread mismanagement.

With respect to the definition of ''mixed-finance projects'' in section 539, the requirement that a project is financially assisted by private resources means that the private resources must be greater than a de minimis amount. In addition, in the same section, new Section 35(h) of the 1937 Act applies only to a mixed-finance project that has a ''significant number'' of units other than public housing units. Therefore, this section would not apply to a mixed-finance project which had only a de minimis number of units other than public housing units.

It is intended that wherever appropriate in programs authorized throughout the bill, reasonable accommodation be made for persons with disabilities. This would apply, for example, in homeownership programs authorized by section 536. With respect to the setting of voucher payment standards authorized by section 545, agencies are urged to make payment standard adjustments to facilitate reasonable availability of suitable and accessible units and assure full participation of persons with disabilities. Subject to the availability of funds, HUD also should allow administrative fee adjustments to cover any necessary additional expenses for serving persons with disabilities fully, such as additional counseling expenses.

The provision allowing HUD to phase in the new Section 8 law, section 559, provides HUD the flexibility to apply current law to assistance obligated before October 1, 1999. This language is intended to be construed so that HUD may continue for as long as necessary to apply current law to families now assisted by Section 8, to the extent the Secretary deems appropriate.

Mr. SARBANES. I thank the Senator for the clarification and concur with the Senator's understanding of the intent of these provisions.

SECTION 226

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with my good friend Senator BOND in order to fully clarify a provision of the VA–HUD Appropriations Act for Fiscal Year 1999. I am pleased that the conferees have included language in Section 226 of the VA–HUD Appropriations Conference Report (H. Rpt. 105–769) which would clarify that existing contractual arrangements between the New York City Housing Authority

(NYCHA) and HUD are maintained. Under current practice, NYCHA is expressly allowed, under prior formula agreement with HUD, to utilize its existing allocations of operating and modernization subsidies for the benefit of certain state and city developed public housing units. While the FY 1999 VA–HUD Appropriations Act will not allocate any additional funds for these local units, the Act does include a specific statutory protection for units which were assisted prior to October 1, 1998. Thus, the current contractual relationship between NYCHA and HUD would be fully protected and maintained. I would ask the distinguished Chairman of the VA–HUD Subcommittee if my explanation is consistent with the intent of the conferees?

Mr. BOND. Mr. President, I concur with the statement by Senator D'AMATO, the Chairman of the Senate Banking Committee. The conferees were mindful of the existing situation in New York City and have fully protected existing practice in the VA–HUD Appropriations Conference Report. No provision of the Act is intended in any way to interfere with or abrogate existing contracts for the use of assistance in New York City.

Mr. D'AMATO. I thank the Chairman for his clarifying remarks and wish to express my thanks to the conferees for their consideration of the unique circumstances which exist in New York City.

THE QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998

Mr. D'AMATO. Mr. President, I rise to support the Quality Housing and Work Responsibility Act of 1998. This public and assisted housing reform legislation is the result of four years of delicate crafting and compromise and has bipartisan Congressional support and the endorsement of Department of Housing and Urban Development Secretary Cuomo. I support its final passage today as part of the Fiscal Year 1999 Veterans Affairs, Housing and Urban Development (HUD) and Independent Agencies appropriations bill (H.R. 4194).

Mr. President, it is with great respect that I salute the distinguished Chairman of the Banking Subcommittee on Housing Opportunity and Community Development, Senator CONNIE MACK. Senator MACK is owed a debt of gratitude for his great determination and commitment to an informed and reasoned approach to public housing reform. He consistently pursued a steadfast course toward a compromise which represents a positive change to the existing public housing system while protecting our residents whom the program serves. I commend him for his strong leadership and effective stewardship of this landmark legislation.

I also commend Banking Committee Ranking Minority Member PAUL SARBANES, Housing Subcommittee Ranking Minority Member JOHN KERRY, all Members of the Banking Committee and many interested Members of the Senate for their essential guidance and leadership on this issue. Chairman KIT BOND and Ranking Member BARBARA MIKULSKI of the VA–HUD Appropriations Subcommittee deserve our appreciation for their willingness to allow this bipartisan legislation to be included in the Fiscal Year 1999 VA–HUD Appropriations Act. Our House colleagues, in particular Banking Subcommittee on Housing Chairman RICK LAZIO, Banking Committee Chairman JIM LEACH, Banking Committee Ranking Minority Member JOHN LAFALCE and Housing Subcommittee Ranking Minority Member JOE KENNEDY, all deserve thanks and appreciation. In addition, I commend and thank HUD Secretary Andrew Cuomo and his Administration for his able assistance and support of this bill. All deserve credit for their dedication to this consensus-building effort.

Resident associations, public housing authorities, low-income housing advocates, non-profit organizations, state and local officials and other affected parties have shared their views and participated in this important political and policy process. I express my thanks to all for their significant involvement which has successfully yielded a balanced, fair, and comprehensive reform bill which will enhance and revitalize affordable housing throughout our nation.

The Quality Housing and Work Responsibility Act recognizes that the vast majority of public housing is well-managed and provides over 1 million American families, elderly and disabled with decent, safe and affordable housing. It also responds to the need for improvements to the public and assisted housing system. It will protect our residents by maintaining the Brooke amendment, which caps rents at 30% of a tenant's income, and establishing a ceiling rent voluntary option as an incentive for working families. In addition, the bill will ensure that housing assistance continues to be targeted to those most in need. Forty percent of all public housing units which become vacant in any year and seventy-five percent of re-issued Section 8 vouchers will be targeted to families with incomes below thirty percent of the local area median income. It will expand homeownership opportunities for low and moderate income families. The bill also will speed the demolition of distressed housing projects through the repeal of the one-for-one replacement requirement.

The reforms contained in this Act will reduce the costs of public and assisted housing to the Federal Government by streamlining regulations, facilitating the formation of local partnerships, and leveraging additional state, local and private resources to improve the quality of the existing stock. These changes will help ensure that federal funds can be used more efficiently in order to serve additional families through the creation of mixed income communities.

Mr. President, I would like to comment in more detail on a few of the many significant provisions in the bill. The legislation recognizes that every American deserves to live in a safe and secure community. To achieve that goal, a number of safety and security provisions have been included in the bill. Specifically, the Act will allow police officers to reside in public and assisted housing, regardless of their income. Also, the Act improves tenant screening and eviction procedures against persons engaged in violent or drug-related crimes or behavior which disrupts the health, safety or right to peaceful enjoyment of the premises of other tenants or public housing employees. In addition, the Act will serve to improve coordination between housing authorities, local law enforcement agencies and resident councils, particularly in developing and implementing anti-crime strategies.

Further, at my request, the Act includes provision to ban child molesters and sexually violent predators from receiving federal housing assistance. To achieve this, local public housing agencies would be granted access to the Federal Bureau of Investigation's national database on sexually violent offenders, as well as State databases. This improved records access provision is critical to ensuring that these offenders are properly screened out and prevented from endangering our children.

Another critical safety and security measure will ensure that housing authorities have the well-defined power to ban absentee and negligent landlords from participation in the Section 8 voucher program. Currently, HUD's regulations only allow housing authorities to refuse to do business with absentee landlords on very narrow grounds. The legislation being passed today will clarify that housing authorities may cease to do business with landlords who refuse to take action against tenants who are engaged in criminal activity or who threaten the health, safety or right to peaceful enjoyment of the premises of their neighbors.

In addition, my proposals to protect the essential rights of current residents have been adopted in the Act and I commend the residents of my home State for bringing injustices to my attention so that I might act. First, the protection against eviction without good cause has been fully maintained in the Act. This is critical for the hundreds of thousands of senior, disabled and hardworking low-income New Yorkers who depend on public and assisted housing for shelter. Second, the residents' right to organize and assemble has been fully protected and extended to the project-based and Section 8 opt-out properties. It is imperative that residents have their First Amendment rights to free speech and assembly protected. Finally, the Act makes absolutely clear that no provision of the existing HUD regulation (24 CFR

964) governing resident councils is in any way abrogated by this Act. I am gratified that the Act protects the residents' right to organize and empower themselves to improve further their own communities.

Without the tireless and steadfast efforts of our staff, this bill would not have become a reality. I would like to express my appreciation and thanks to the following Senate majority and minority Banking Committee and Housing Subcommittee staff: Chris Lord, Kari Davidson, Cheh Kim, Jonathan Miller, Matthew Josephs, and Army Randel. I would also like to commend the House Banking Committee and Housing Subcommittee staff for their fine work and spirit of cooperation.

Mr. President, this landmark legislation will greatly improve the quality of life for our nation's families residing in public and assisted housing and will help to ensure the long-term viability of our nation's existing stock of affordable housing. I respectfully urge its immediate passage.

RENT CHOICE PROVISION

Mr. D'AMATO. Mr. President, I would ask my friend Senator MACK for a clarification of the provision included in the Quality Housing and Work Responsibility Act of 1998 which will grant residents a voluntary option to choose a flat rent. Several clarifying provisions have been added to the legislation to protect residents and reduce the administrative burden of such a choice on housing authorities. First, residents will be protected from being coerced into making a choice of rents which is adverse to their interest. Second, in the case of a financial hardship, residents are granted the right to an immediate change to the Brooke Amendment rent, which caps rent at no greater than thirty percent of income.

Mr. President, the Act also specifically provides that no additional administrative burden be placed on housing authorities that already administer flat rent or ceiling rent systems. If an agency's present system allows the family the opportunity to annually request a change from an income-based system to a flat or ceiling rent system, or vice-versa, the fact that rent is initially determined by an existing computer system which automatically selects the lower rent should not be considered contrary to the requirements of the Act. I would ask Senator MACK if these statements accurately describe the provisions of the Act?

Mr. MACK. Mr. President, I fully concur with the statements of my friend, Senator D'AMATO. His statements are fully consistent with my understanding of the legislation.

SECTION 8 TENANT-BASED RENEWAL TERMS

Mr. D'AMATO. Mr. President, I would like to ask Senator MACK his view of the provisions of the Quality Housing and Work Responsibility Act of 1998 that relate to the renewal of expiring tenant-based Section 8 contracts. I am greatly heartened by the inclusion of specific terms for the renewal of expiring Section 8 tenant-based contracts. The renewal terms included in the Act will ensure that housing authorities continue to receive full funding to maintain effective Section 8 assisted housing programs. The Act's renewal provision will address a number of problems which have arisen—including a very serious potential threat to affordable housing in my home State of New York—as a result of HUD's attempt to revise its method of funding renewals.

Under the renewal terms of Section 556 of the Act, housing authorities will be ensured that they receive full funding to maintain their current obligations and continue to re-issue turnover vouchers, without any attrition or loss of assistance. Housing authorities in New York will be able to continue to assist thousands of new families each year—particularly the homeless and victims of domestic violence. Without the changes included in this legislation, the New York City Housing Authority alone could have suffered a loss of over 7,000 vouchers over the next few years. This potential catastrophe has been averted.

To be more specific, Section 556 establishes a baseline for maintaining current Section 8 obligations. This baseline is to be calculated by taking into account the number of families which were actually under lease as of October 1, 1997 plus any incremental units or additional units authorized by HUD after that date. It is the explicit intent of the authors of this legislation that the units approved by HUD pursuant to its April 1, 1998 Notice shall be included in the definition of ''additional families authorized.'' Finally, HUD shall apply an inflation factor to the baseline which takes into account local factors such as actual increases in local market rents.

I would ask Senator MACK, if these statements are consistent with his views of the legislation?

Mr. MACK. Mr. President, Senator D'AMATO's comments are absolutely accurate. Section 556 of the Act was added in response to a vociferous outcry among housing authorities and low-income advocates who feared that HUD's administrative actions during Fiscal Year 1998 could have inadvertently led to a decline in housing assistance under the Section 8 program. The renewal terms included in the Act are intended to avoid such a result and will ensure that full funding for the program is maintained. I appreciate the Chairman's work to ensure that this provision will not have adverse budgetary implications.

Mr. D'AMATO. I thank the Senator for his clarifying remarks and commend him for the excellent work that went into the legislation.

DRUG ELIMINATION PROGRAM AMENDMENTS

Mr. D'AMATO. Mr. President, I would like to enter into a colloquy with the respected Chairman of the Banking Committee's Subcommittee on Housing Opportunity and Community Development, Senator CONNIE MACK and the full Committee Ranking Member, Senator PAUL SARBANES. One of the most significant provisions addressed by the Quality Housing and Work Responsibility Act of 1998 is the amendment of the Public and Assisted Housing Drug Elimination Act of 1990.

Mr. President, the Drug Elimination Program is critical to the fight against drugs and serious, violent crime in our Federal housing developments. The residents of this housing have a right to a safe and peaceful environment. The Federal Government bears a unique and overriding responsibility to ensure that residents feel secure in their homes, can walk to the store or send their children to school without fear for their physical well-being. I am especially appreciative of the inclusion of a funding mechanism which will ensure the continued direction of assistance to housing authorities with significant needs. In my home State, the Drug Elimination Program plays a critical role in communities from Buffalo, Syracuse, Rochester and Albany to Brooklyn, the Bronx and Long Island. The provisions of the Act will ensure that existing programs are placed on a solid financial foundation—without precluding assistance to new programs which meet urgent or serious crime problems.

I would ask the distinguished Chairman of the Housing Subcommittee for his views on the legislation?

Mr. MACK. Mr. President, I welcome the comments of my friend, Senator D'AMATO. Indeed, the amendments to the Public and Assisted Housing Drug Elimination Act of 1990 which we have included in the Act represent a significant improvement in the program. The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

Mr. President, the intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty.

Mr. SARBANES. Mr. President, I concur with my colleagues. Drug Elimination Grant funds have proven to be an extremely effective tool in fighting drugs and crime in public housing. This provision will enable housing authorities with significant needs to implement long-term strategies to continue this important fight. I

appreciate the work of the Chairman on this important issue.

Mr. D'AMATO. Mr. President, I thank both of my colleagues for their clarifying remarks.

Mr. MCCAIN. Mr. President, once again, I find myself in the unpleasant position of speaking before my colleagues about unacceptable levels of parochial projects in the VA/HUD appropriations bill. Although the level of add-ons in some portions of this conference are down, this bill still contains approximately $865 million in wasteful pork barrel spending. This is an unacceptable amount of low priority, unrequested, wasteful spending.

The level of add-ons in the Veterans Affairs section of this conference report is down. The total value of specific earmarks in the Veterans Affairs section of this conference report is about $116 million.

Let me just review some examples of items included in the bill. The bill directs $1 million for the VA's first-year costs to the Alaska Federal Health Care Partnership's proposal to develop an Alaska-wide telemedicine network to provide access to health services and health education information at VA, IHS, DOD and Coast Guard clinic facilities and linking remote installations and villages with tertiary health facilities in Anchorage and Fairbanks.

An especially troublesome expense, neither budgeted for nor requested by the Administration for the past seven years, is a provision that directs the Department of Veterans Affairs to continue the seven-year-old demonstration project involving the Clarksburg, West Virginia VAMC and the Ruby Memorial Hospital at West Virginia University. Last year, the appropriations bill contained a plus-up of $2 million to the Clarksburg VAMC that ended up on the Administration's line-item veto list and that the Administration had concluded was truly wasteful.

The VA provides first-rate research in many areas such as prosthetics. However, some of my colleagues still prefer to direct the VA to ignore their priority research programs and instead provide critical veterans health care dollars for parochial or special interest projects. For example, this bill earmarks $3 million for the Center of Excellence at the Truman Memorial VA Medical Center in Missouri for studies on hypertension, surfactants, and lupus erythematosus, and provides $6 million in the medical and prosthetic research appropriation for Musculoskeletal Disease research in Long Beach, California. It is difficult to argue against worthy research projects such as these, but they are not a priority for the Department of Veterans Affairs.

Like transportation and military construction bills, the VA appropriations funding bill is no exception for construction project additions to the President's budget request. For example, the bill adds $7.5 million in funding for the Jefferson Barracks National Cemetery in Missouri for gravesite development which will provide 13,200 grave sites for full casket interments. Although this is a worthy cause, I wonder how many other national cemetery projects in other States were leapfrogged to ensure that Missouri's cemetery received in the VA's highest priority.

In the area of critical VA, medical facility funding, again, certain projects in key members' states received priority billing, including $20.8 million add for the Louis Stokes Cleveland VA Medical Center ambulatory care renovation project in Ohio, a $9.5 million add for the Lebanon, Pennsylvania VAMC for nursing unit renovations, including providing patients with increased privacy, a $25.2 million add for construction of an ambulatory care addition at the Tucson VA Medical Center in Arizona, and provides $125,000 for renovation of the Pershing Hall building in Paris, France for memorial and private purposes.

Mr. President, we are charged with the important responsibility of dedicating funding toward the highest priorities to safeguard our environment. Yet, I am troubled that this conference report is loaded with directed earmarks toward specific projects without adequate explanation of why these projects are higher in priority than national environmental problems and needs.

I continue to hear about the number of Superfund sites that are in critical need of remediation actions or leaking background storage tanks that continue to endanger lives. Yet, the picture that I am putting together from this report is a prioritization of member interest projects. EPA's overall budget contains approximately $484,325,000 in earmarks that are directed to specific states and to national organizations.

Rather than dedicating funding toward our most pressing environmental concerns, the priorities of the conferees are earmarking spending of $125,000 for the establishment of a regional environmental finance center in Kentucky and $225,000 for a demonstration project in Maryland to determine the feasibility of using poultry litter as a fuel to general electric power.

I commend the efforts of my colleagues who worked tirelessly to rectify differences between the two chambers and present us with this conference report. Each of them have worked diligently to ensure that important housing programs and initiatives are adequately funded in a fair and objective manner.

Contained in this bill is funding for many programs vital in meeting the housing needs of our nation and for the revitalization and development of our communities. Many of the programs administered by HUD help our nation's families purchase their homes, assists low-income families obtain affordable housing, combats discrimination in the housing market, assists in rehabilitating neighborhoods and helps our nation's most vulernable—the elderly, disabled and disadvantaged have access to safe and affordable housing.

In July, I came to the Senate floor and highlighted the numerous earmarks and set asides contained in the Senate version of this bill. At that time, the egregious violations of the appropriate budgetary process in the HUD section amounted to $270.25 million dollars.

Unfortunately, I find myself coming to the floor today to again highlight the numerous earmarks and budgetary violations which remain in the conference report of this bill. In the HUD section alone there is $265.1 million in set asides or earmarks. While this amount is slightly lower than when the Senate first considered this bill it is still too great a burden for the American taxpayers.

The list of projects which received priority billing is quite long but I will highlight a few of the more egregious violations. There is $1.25 million set aside for the City of Charlotte, NC to conduct economic development in the Wilkinson Boulevard corridor, $1 million for the Audubon Institute Living Sciences Museum in New Orleans and $2 million for the Hawaii Housing Authority to construct a community resource center at Kuhio Homes/Kuhio Park Terrace in Honolulu, Hawaii.

It is difficult to believe many credible and viable community development proposals may be excluded from access to federal housing funds because such a large amount of funds have been unfairly set aside for specific projects fortunate enough to have advocates on the appropriating committee.

Finally, I would like to comment on the public housing reform bill which is now included in this funding bill. In the limited period of time I was afforded to examine this provision, I have learned that it includes several initiatives intended to enhance the quality of life for many individuals while promoting self sufficiency and personal responsibility in our communities.

While I applaud these goals and will not object to this bill based on the inclusion of this section I am gravely concerned about the process used to pass this reform bill. It concerns me that this complex measure was inserted at the last moment during conference which precluded the Senate from having sufficient time to thoroughly examine its contents and fully evaluate its objectives. This is a very serious matter which directly impacts the lives of thousands of American families and our local communities.

Certainly, this issue deserves thoughtful deliberation and careful review through the established legislative process and should not be attached at the last moment to a funding conference report. This is not the manner in which we should be implementing meaningful reform intended to benefit the citizens of our nation.

Mr. President, I have touched on only the tip if the iceberg. There is more I

could point to, were time available. I continue to look forward to the day when my trips to the floor to highlight member interest spending are no longer necessary.

The PRESIDING OFFICER. The Senator from Missouri has 7 minutes 30 seconds remaining.

Mr. BOND. I yield 7 minutes 30 seconds to the Senator from Florida. I will ask my colleague, if there is additional time remaining, if he might have 2½ minutes.

Ms. MIKULSKI. I would be happy to work with the Senator. I would like to bring to my colleague's attention that Senator SARBANES might be parachuting in, as well, to comment on the public housing initiatives. If he lands, I want to be able to accommodate him.

The PRESIDING OFFICER. The Senator from Florida is recognized for the remaining time.

Mr. MACK. Mr. President, I am pleased to rise in support of this conference report. I want to commend the chairman of the subcommittee, Senator BOND, and the ranking member, Senator MIKULSKI for bringing to the floor a well-balanced bill.

I am extremely pleased that this bill contains a comprehensive reform of the nation's system of public and assisted housing. We began this process of reforming public housing more than three years ago. Negotiating this legislation was a long, difficult and sometimes painful process. But the end result is a carefully crafted, bipartisan compromise that reflects input from the Senate, the House, and the administration. I believe it is a good bill. I appreciate the indulgence of Chairman BOND in permitting the authorizing committee to utilize the appropriations process as the vehicle to enact these important reforms, and I appreciate his long-standing support of public housing reform. In the end, it was the willingness of the Appropriations Committee to increase the level of incremental section 8 assistance that removed the last hurdle to this agreement.

I want to express special thanks to Senator PAUL SARBANES for his critical role in the development of this legislation and in the recent negotiations. I am convinced that this agreement would not have been possible without the leadership and support of the Senator from Maryland, and I can't thank him enough. I also want to thank the chairman of the Banking Committee, Senator ALFONSE D'AMATO, for his steady support and guidance over the past 3 years, and also the ranking member of the Housing Subcommittee, Senator KERRY, who has made major contributions to this legislation. This has truly been a bipartisan effort throughout.

There are so many people that have played a role in this. Obviously, the Secretary of HUD, Secretary Cuomo, and I spent many hours and many, many phone calls trying to work through this and working also with Congressman LAZIO, who made a special effort to try to find a way to bring this to a conclusion, and also the work of Congressman LEWIS, the chairman of the subcommittee on the House side. So, again, this has truly been a bipartisan effort. I thank all of those who were involved.

Since my appointment to the Banking Committee almost 10 years ago, I have visited public housing developments throughout Florida and in cities like Detroit, Chicago, and Jersey City. I have seen public housing that is well run and I have seen public housing that concentrates the very poorest of the poor in developments that are havens for crime and drug abuse and islands of welfare dependency.

On a personal note, I want to say to my colleagues that while I have been working on this specific legislation now for 4 years, I have been involved in public housing issues now for 10 years, since I have been on the Banking Committee. There are two particular thoughts that come to my mind, two visits that I made.

I spoke with individuals that lived in public housing, and that significantly affected me. I am pleased to say it has had a major role in this legislation that we developed. One person was an individual from Liberty City in Miami, who, frankly, grew up in public housing in Liberty City and saw how public housing has changed since the late 1930s. She—and I have used this term—''screamed'' at me as she was explaining to me the problems she was dealing with and how she used to have a decent place to live and how it had been destroyed over the years. Her message was heard.

I also think of a little 4, 5, or 6-year-old boy in Melbourne, FL. When we walked out of an apartment that was totally destroyed, as we walked down between these three-story buildings and saw the boarding up of windows and doors hanging by their hinges, this little fellow was walking down between the buildings. I thought to myself, what kind of future can this little fellow possibly dream of if the only environment in which he was going to live was the public housing like we saw. I wanted to share that with my colleagues.

The time is long overdue for us to eliminate the disincentives to work and economic self-sufficiency that trap people in poverty, and to ease the complex, top-down bureaucratic rules and regulations that aggravate the problems and prevent housing authorities from operating effectively and efficiently. It is time to begin the process of deconcentrating the poor, create mixed-income communities with role models and establish a foundation for building communities of hope instead of despair.

Let me make clear that this is only the beginning. The effect of these reforms won't be felt overnight. We are creating a framework for meaningful and beneficial change in our public and assisted housing system. But our ultimate success will depend on the ongoing cooperation and commitment of Congress, HUD, housing authorities, residents, and local communities.

The reforms contained in this legislation will significantly improve the nation's public housing and tenant-based rental assistance program and the lives of those who reside in federally assisted housing. The funding flexibility, substantial deregulation of the day-to-day operations and policies of public housing authorities, encouragement of mixed-finance developments, policies to deal with distressed and troubled public housing, and rent reforms will change the face of public housing for PHAs, residents, and local communities.

This bill empowers residents and promotes self-sufficiency and personal responsibility. It institutes permanent rent reforms to remove disincentives for residents to work, seek higher paying jobs and maintain family unity. Further, it expands homeownership opportunities for residents of both public and assisted housing.

It improves the living environment for public housing residents by expanding opportunities for working poor families and providing flexibility for housing authorities to leverage private resources and develop mixed-income, mixed finance communities.

It refocuses the responsibility for managing public housing back to the public housing authorities, residents and communities, it eliminates counterproductive rules and regulations, and frees public housing communities to seek innovative ways to serve residents.

The bill requires tough, swift action against PHA with severe management deficiencies and provides HUD or court-appointed receivers with the necessary tools and powers to deal with troubled agencies and to protect public housing residents.

It enhances safety and security in public housing by enhancing the ability of public housing authorities to screen out and evict criminals and drug abusers who pose a threat to their communities.

Finally, the bill enhances resident choice. It merges the section 8 voucher and certificate programs into a single, choice-based program designed to operate more effectively in the private marketplace. It repeals requirements that are administratively burdensome to landlords, such as ''take-one, take-all,'' endless lease and 90-day termination notice requirements. These reforms will make participation in the section 8 tenant-based program more attractive to private landlords and increase housing choices for lower income families.

To get to this stage, we have had to work through some very difficult and contentious issues. All sides have been willing to make concessions in the interest of compromise. I will mention only one of those issues—income targeting.

At a time when housing resources are scarce, a strong argument can be made that the bulk of housing assistance should be made available for the very poor. At the same time, there is a concern that excessive concentrations of the very poor in public housing developments have negatively affected the liveability of those developments.

The final income targeting numbers of public housing and project-based and tenant-based section 8 represent a fair compromise that will encourage mixed income communities in public housing, and ensure that tenant-based assistance remains an important tool for housing choice for very low-income families.

Mr. President, this public housing reform bill is the first comprehensive housing reform measure to pass Congress in almost six years. It is a good, bipartisan package that represents the most significant reform of public and assisted housing in decades. I urge my colleagues to adopt this conference report and I urge the President to sign the bill.

Mr. President, Senator SARBANES was not here when I mentioned earlier how much I appreciate his working with us, working with me, in trying to find ways to keep the process moving as we would hit roadblock after roadblock after roadblock. I want to extend to him publicly my appreciation for his work; also, again, to Senator MIKULSKI, and to Senator BOND. We know that we added to their difficulties. We greatly appreciate what they were able to accomplish with us.

Lastly, I want to mention some members of the staff. Jonathan Miller, and Matt Josephs of the minority staff, again, just went out of their way to help us accomplish this. David Hardiman and Melody Fennel—I thank them as well.

Chris Lord, Kari Davidson, and Cheh Kim of my staff did an outstanding job and worked endless hours to accomplish this, at moments of maybe thinking that we weren't going to make it but held in there to get the job done. I thank them.

I thank the Chair for his indulgence. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 7 minutes 43 seconds remaining.

Ms. MIKULSKI. I yield such time as he may use to Senator SARBANES, and I very much appreciate his excellent work.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I thank the Chair.

First, although I am going to speak a little more later about our involvement in this process, I thank Senator MACK for his very generous and gracious comments, and I want to say that this bill would never have happened but for his very fine leadership. I am extremely indebted to him for the very positive and instructive and understanding way he moved this process forward. It has been a long and difficult process, but I am very pleased that we have arrived at this day.

First, let me express my very strong support for this bill. I want to commend Senator MIKULSKI and the chairman, Senator BOND, for their very excellent work with respect to the matters before the Appropriations Subcommittee. In particular, I want to applaud them for the excellent bill they have written with regard to the funding for the Department of Housing and Urban Development.

The President submitted a strong budget. And I am happy to see that the bill now before us responds to many of those requests.

The bill represents a well-rounded approach to housing and economic development. It provides for 50,000 new vouchers targeted to helping people move from welfare to work by eliminating the current 90-day wait on reissuing vouchers upon turnover. The bill effectively adds another 40,000 vouchers.

It provides $500 million in additional capital funds for public housing modernization to help maintain this important affordable housing resource. And the bill includes a total of $625 million for HOPE VI, the very innovative program that was created by my very able colleague, Senator MIKULSKI, which is focused on tearing down the worst, most isolated public housing projects and replacing them with mixed-income housing. Senator MIKULSKI has been an absolute champion of trying to rescue this situation which plagues many of our very large housing projects. I want to acknowledge the tremendous leadership that she has provided in this area. Working together with Senator BOND, they have fashioned I think a first-rate piece of legislation. I am very pleased to support it.

Let me say, since she is my very able colleague, what a pleasure it has been working with her. I sit on the authorizing committee. Of course, she is on the appropriating committee. Over the years we have been able to work together I think in a partnership not only for our State but for the country.

Mr. President, the primary reason I come to the floor today is to call the Senate's attention to the fact that an important piece of legislation reforming the Nation's Public Housing Program is attached to this appropriations conference report. This is a tremendous step forward. This public housing legislation I think represents a fine piece of legislative craftsmanship. It reflects a bipartisan approach to reform of our public and assisted housing.

We have been working at this problem, Senator MACK has been working at this problem for 4 years, at least. The success of this effort reflecting what is before us, is, to a very significant extent, the result of the fine leadership provided by Senator MACK as Chairman of the Housing Subcommittee of the authorizing committee; the work of Senator KERRY, the ranking member of that subcommittee, interacting with our House colleagues, and with Secretary Cuomo, who has been a tireless advocate for housing and economic development programs.

Senator MACK has taken a keen interest in the area of public housing since he took over the housing subcommittee in 1995. He has personally visited public housing projects and has spoken to administrators and residents. The commitment of his own time and concern I think is a model of how people responsible for certain programs need to understand the program, oversee the program, and then formulate the changes which will make the program work better.

Senator MACK has been a strongly positive and constructive force throughout the long and often difficult process we have followed to get this positive resolution. I am pleased to express publicly my very deep respect and appreciation for his efforts.

Mr. President, this public housing bill embodies an important bargain. We provide public housing authorities with increased flexibility to develop local situations to address housing needs in their communities but, in turn, they are required to use that flexibility to better serve their residents by creating healthier, more economically integrated communities.

The PHAs will get more flexibility in how to use operating and capital funds. It encourages them to seek new sources of private capital to both build new housing and to repair existing units. It provides more flexibility in the calculation of public housing development costs and encourages the construction of higher quality housing.

Finally, the law gives PHAs increased flexibility to admit higher income families while guaranteeing that the poor, including the working poor, continue to have access to 40 percent of the public housing units made available each year.

This new increased flexibility is not an end in itself. The purpose is to provide higher quality housing in an overall improved living environment to the families who live in public housing. We want the Public Housing Program and the Rental Voucher Program, which the appropriators have generously supported in this legislation, to be stepping stones to better lives, to provide access to better schools and more economic opportunities.

There is now a growing consensus that we need to have a mix of families with different levels of income in public housing. Such a policy will strengthen public housing projects and make them more livable communities. To ensure this outcome, the legislation requires the public housing authorities to demonstrate how they will attempt to create these more economically integrated communities. The Secretary

is required to review these plans and to ensure that housing authorities pursue them.

The bill also creates new rent rules that encourage existing tenants to go to work. There is a mandatory earned income disregard so that tenants who start working will reap the benefit of that effort at least for a year before additional payments are phased in. As a result of the special efforts of Senator KERRY, the bill deepens the targeting above the levels contained in both House and Senate bills for section 8 vouchers, requiring 75 percent of vouchers to go to lower-income families.

The bill gives tenants an important role in working with housing authorities to determine housing policies. Residents will sit on boards, and the resident advisory boards I think will be very helpful.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SARBANES. May I have 30 seconds, if the chairman has any time?

The PRESIDING OFFICER. All time has expired.

Mr. BOND. Mr. President, I ask unanimous consent that the distinguished Senator from Maryland have an additional minute. I ask for an additional 3 minutes on this side to afford 2 minutes to my colleague from Ohio and a minute for myself to close.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. I thank the chairman.

Finally, the bill helps encourage home ownership in two ways. First, as a result of an amendment offered by Senator DODD, our able colleague from Connecticut, public housing authorities will be able to devote part of their public housing capital funds to home ownership activities. In addition, section 8 assistance will be able to be used to support home ownership.

Mr. President, I close again by thanking Senator BOND and Senator MIKULSKI for their very effective efforts. We are deeply appreciative of their cooperation. I again voice my respect for the tremendous leadership which Senator MACK provided in enabling us to achieve public housing reform which we have been striving to achieve for a number of years and to do it in a way that commands a consensus. The process we followed in working this out I really commend to all my colleagues. I think it is an example of how really to craft legislation and in the end achieve a very positive and constructive result.

Finally, I want to recognize and thank the staff for their hard work and dedication. Jonathan Miller and Matt Josephs on the Democratic side, Chris Lord, Kari Davidson, Cheh Kim, David Hardiman, and Melody Fennel from the Majority side, worked extremely well together to help us bring this finished product to the floor today.

In closing, Mr. President, I urge all my colleagues to support this important piece of legislation.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield 2 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 2 minutes.

Mr. DEWINE. I thank my colleague.

Mr. President, I rise today to discuss two important provisions in this bill—provisions that honor two distinguished Ohioans who are retiring from public service this year—LOU STOKES and JOHN GLENN.

Mr. President, the bill before us would name the Veterans Administration Medical Center in Cleveland, Ohio, the Louis Stokes VA Medical Center. That is a fitting tribute for a number of reasons.

First, LOU STOKES is a veteran, serving our country in the U.S. Army during the Second World War.

Second, as ranking member of the House Appropriations Subcommittee on Veterans' Affairs, LOU STOKES has demonstrated that he is a true champion on behalf of his fellow veterans.

Third, LOU STOKES in recent years has dedicated his attention to improving the quality of care at the facility that will bear his name. He has been working tirelessly with me to provide funds to improve this facility for our veterans in northeast Ohio. This bill in fact contains $20.8 million to improve the ambulatory care unit at the Stokes Medical Center. This is the latest of a lifetime of examples of how LOU STOKES has made a difference—a difference for veterans and for all his constituents.

I also am pleased and proud that the bill before us contains a provision that, in my view, represents the deepest feelings of the people of Ohio regarding our senior Senator JOHN GLENN.

Mr. President, it would be fair to say that the imagination of Ohio, and indeed of all America, has been captured by Senator GLENN's impending space voyage. It is an inspiring odyssey. It is exiciting—it reminds us of the spirit of American possibility we all thrilled to when JOHN GLENN made his first orbit back in 1962.

Senator GLENN's return to space as a member of the crew of the space shuttle *Discovery* marks the culmination of an incredible public career.

This is man who flew 149 heroic combat missions as a Marine pilot in World War II and the Korean war—facing death from enemy fighters and anti-aircraft fire.

And none of us who were alive back in 1962 can forget his historic space flight. I was in Mr. Ed Wingard's science class, at Yellow Springs High School in Yellow Springs, Ohio—we were glued to the TV. Our hearts, and the hearts of all Americans, were with him that day.

JOHN GLENN reassured us all that America didn't just have a place in space. At the height of the cold war, he reassured us that we have a place—in the future.

And that, Mr. President, brings me to the purpose of the legislation I am introducing. Even as we speak, in Cleveland, Ohio, there are some hardworking men and women of science who are keeping America strong, who are keeping us on the frontier of the human adventure. They are the brilliant, persevering, and dedicated workers of the NASA-Lewis Space Research Center.

People who understand aviation know how crucially important the cutting-edge work of the NASA-Lewis scientists is, for America's economic and technological future.

Mr. President, what more fitting tribute could there be to our distinguished colleague, Senator GLENN, than to rename this facility—in his honor?

That, Mr. President, is the purpose of this legislation. It recognizes not just a man's physical accomplishments—but his spirit. It inspired us in 1962. It inspires us this year. And it will remain strong in the work of all those who expand America's frontiers.

The facility would be renamed the National Aeronautics and Space Administration John H. Glenn Research Center at Lewis Field—to honor our distinguished colleague, and also the aviation pioneer for whom it is currently named. George Lewis became Director of Aeronautical Research at the precursor to NASA in 1919. It was then called the National Advisory Committee on Aeronautics, or NACA.

Lewis visited Germany prior to World War II. When he saw their commitment to aeronautic research, he championed American investment in aeronautic improvements—and created the center which eventually bore his name.

He and JOHN GLENN are pioneers on the same American odyssey. Ohio looks to both of them with pride—and with immense gratitude for their leadership.

And I am proud, today, that we were able to include this in the bill. I thank my colleagues for that, and I also want to thank our good friend, LOUIS STOKES, who has been instrumental in shepherding this measure honoring Senator GLENN in the other body.

Mr. President, I thank the Chair and I yield the floor.

Mr. BOND. Mr. President, I thank my colleague from Ohio.

I, too, join with him in expressing appreciation for the services of our colleague, Senator GLENN, and our colleague on the House side, Congressman STOKES. I believe it is very important that we recognize them in this bill. I thank him for his comments.

Again, my sincerest thanks to Senator MIKULSKI, to Andy Givens, David Bowers, and Bertha Lopez on their side. On my side, this is a very difficult bill, and I could not have done it without the leadership of Jon Kamarck and the dedicated efforts of Carrie Apostolou and Lashawnda Leftwich.

We have the statement by the chairman of the Budget Committee saying this bill is within the budget guidelines.

I urge my colleagues to support this measure because I believe, while it has many compromises in it, they are reasonable compromises. I am most hopeful that we can have a resounding vote and see this measure signed into law.

I thank the Chair and staff for their courtesies, and I urge a yes vote on the conference report.

Mr. President, I ask for the yeas and nays on this conference report.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the VA–HUD conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER (Mr. INHOFE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—96

Abraham	Enzi	Lugar
Akaka	Faircloth	Mack
Allard	Feingold	McCain
Ashcroft	Feinstein	McConnell
Baucus	Ford	Mikulski
Bennett	Frist	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Gramm	Murray
Boxer	Grams	Nickles
Breaux	Grassley	Reed
Brownback	Gregg	Reid
Bryan	Hagel	Robb
Bumpers	Harkin	Roberts
Burns	Hatch	Rockefeller
Byrd	Hutchinson	Roth
Campbell	Hutchison	Santorum
Chafee	Inhofe	Sarbanes
Cleland	Inouye	Sessions
Coats	Jeffords	Shelby
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Specter
Craig	Kerry	Stevens
D'Amato	Kohl	Thomas
Daschle	Landrieu	Thompson
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Durbin	Lott	Wyden

NAYS—1

Kyl

NOT VOTING—3

Glenn	Helms	Hollings

The conference report was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

SENATOR GORTON RECEIVES HIS FIFTH GOLDEN GAVEL AWARD

Mr. LOTT. Mr. President, yesterday evening the senior Senator from Washington, Senator GORTON, reached 100 presiding hours in the 105th Congress for his 100 hours of service presiding over the Senate. He will be awarded the Golden Gavel. But there is an interesting point here. This is the fifth Golden Gavel that Senator GORTON has obtained in his years in the Senate—representing 500 hours presiding in the Senate Chamber.

I think most Senators will acknowledge that he does an excellent job when he is the Presiding Officer. He is one we call on quite often on Friday afternoons or late at night. He is always willing to do it. And he dedicates each one of these Golden Gavels to one of his grandchildren. He has seven. This is the fifth one; so he has two more to go.

This is an assignment that takes time and patience. I publicly thank Senator GORTON for achieving this and for the way that he is doing it for his grandchildren.

I ask my colleagues to join in expressing our appreciation.

(Applause.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. I do not know that anything else needs to be said, but I certainly want to join with the majority leader in offering my congratulations and my condolences for all of those hours. As one who has only been presented one Golden Gavel in my time in the Senate, I can appreciate the magnitude of the accomplishment just accomplished by the senior Senator from Washington. On behalf of all of our colleagues, I join in congratulating the Senator. I yield the floor.

INTERNET TAX FREEDOM ACT

Mr. MCCAIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:.

A bill (S. 442) to establish national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

Pending:

McCain/Wyden amendment No. 3719, to make changes in the moratorium provision.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3719

Mr. MCCAIN. Mr. President, it is my understanding there is no further debate regarding the consideration of the amendment at the desk. I ask that it be adopted.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 3719) was agreed to.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711, as modified.

The PRESIDING OFFICER. The clerk will report.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I raise a point of order that this amendment is not germane.

The PRESIDING OFFICER. Would the Senator from Florida suspend for just a moment?

The clerk first will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Mr. GRAHAM. Mr. President, I object to the modification of the amendment and raise a point of order that the amendment is not germane.

AMENDMENT NO. 3711

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711.

The PRESIDING OFFICER. Does the Senator from Arizona withdraw his previous amendment?

Mr. MCCAIN. I withdraw it and call up amendment No. 3711.

The amendment (No. 3711), as modified, was withdrawn.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) imposes the obligation to collect or pay the tax on any provider of products or services made available and obtained digitally where the location, business, or residence address of the recipient is not provided as part of the transaction or otherwise is unknown to the provider; or

(v) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Am I correct that there is not a request to modify this amendment?

The PRESIDING OFFICER. There is a properly filed request to modify the——

Mr. GRAHAM. I object to that request to modify and I raise again the point of order that the amendment is not germane.

The PRESIDING OFFICER. There is no request to modify the pending amendment. There is a duly filed motion to suspend the rules with respect to that amendment. The motion to suspend is debatable.

Is there further debate?

Mr. GRAHAM. Mr. President, point of parliamentary inquiry. Will there be a ruling on the motion of the point of order as to germanity?

The PRESIDING OFFICER. The motion to suspend the rules needs to be resolved.

Mr. GRAHAM. Further point of inquiry.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. What is the position relative to debate on the motion to suspend the rules for the purpose of considering this amendment?

The PRESIDING OFFICER. The Senate is operating under cloture, and the motion will be debatable as under the limitation of the cloture rule.

Mr. MCCAIN. Mr. President, has the Chair ruled?

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO SUSPEND THE RULES

Mr. MCCAIN. In full accordance with the rules and procedures of the Senate and pursuant to the notice filed yesterday, I move to suspend rule XXII as it applies to the consideration of amendment No. 3711.

And, Mr. President, for the information of my colleagues, I want to explain what will occur here and the significance of this vote.

By the way, as far as the modification is concerned to amendment No. 3711, since it is agreed on both sides, once we dispense with this parliamentary tactic, then obviously we will be able, by unanimous consent, to modify to satisfy a concern that was not included in the amendment.

At some point this morning we will vote to suspend the rules regarding germaneness with respect to the pending amendment. Senator WYDEN and I would have offered this amendment earlier, long before cloture was invoked, but we didn't because we were still negotiating language with other Senators—specifically, the Senator from North Dakota and other Senators—who were involved in this very important piece of legislation. We could have offered it and I am sure we could have passed the amendment, but in the environment of trying to reach overall agreement on language of this legislation we did not do it at that time. We did not propose this amendment in order to accommodate other Senators. As we all know, sometimes there are package agreements involving different parts of the legislation.

The Democratic manager of the bill, Senator DORGAN, Senator WYDEN and myself came to agreement on the language of the amendment. It was at that time, and only at that time, we were notified that a point of order would be raised against the language, even though we have been negotiating with the Senator from Florida and his staff since last August on this package. Doing so obviously is the Senator's right. I don't begrudge any Senator their right to use the rules to his or her advantage. But I do want to make it clear we tried to be fair and accommodate everyone who has left us in this position.

Simply, if we don't succeed in suspending the rules and adopting this amendment, Senator WYDEN and myself will no longer pursue this legislation. It won't pass. Internet tax freedom, at least for this year, will be dead. Because, Mr. President, failure to adopt this amendment will render this bill impotent.

I suspect that may have been the desire of some Members all along, to kill this bill. Let there be no mistake, failure of this bill will hurt the future of electronic commerce and will subject our constituents to new taxes. Yes, a vote against suspending the rules is a vote to kill the bill. Without the language of this amendment being added, the bill is meaningless; it will accomplish nothing. Therefore, we will not pursue the legislation.

But this vote means more than killing the Internet Tax Freedom Act. Adopted to this bill was Senator BRYAN's Children's Online Privacy Act. That is a very important bill that will protect children who use the Internet. It is bipartisan legislation that was passed out of the Commerce Committee by a unanimous vote. If this bill dies today, Senator BRYAN's Children Online Privacy Bill dies today.

Adopted to this bill was Senator COATS' Decency Act. That measure was adopted by a vote of 98–1 yesterday. The Coats amendment is exceedingly important to protect our children from pornography that is proliferating on the world wide web. If this bill dies today, Senator COATS' Decency Act dies today.

Adopted to this bill was Senator DODD's amendment regarding filtering. The Dodd amendment would require Internet service providers making filtering software available to families so that they can screen unwanted and harmful material from appearing on their computer. The Dodd amendment has twice been adopted by the Senate. It is important.

Adopted to this bill was Senator ABRAHAM's Digital Signature bill. This bill was reported by the Commerce Committee with no opposition.

Mr. President, if we cannot suspend the rules and adopt this amendment that is supported by both managers, the Internet tax bill is dead and so is the vital legislation sponsored by our colleagues.

Let me briefly explain why this amendment is needed. The amendment does two things. First, it clarifies what is a discriminatory tax. This is necessary because without this definition the moratorium is rendered meaningless. States and localities do not pass new laws every time a new product appears. They simply interpret existing laws to apply to the products. What we are seeking to do here is clarify that the Internet cannot be singled out for the application of a tax in a discriminatory manner. For example, if an entity has a wicket tax, or a cellular phone tax, or a microwave oven tax, it would not be able to apply such tax in a discriminatory manner solely to the Internet and thereby claim the moratorium does not apply.

Mr. President, if this definition is not included in the bill, then the moratorium is gutted.

The second part of the amendment clarifies that the location of a server or of web pages does not constitute nexus. This is exceedingly important. If an individual in Iowa, sitting at his or her desk is surfing the web and buys a product for his mother in Tennessee from a company in Maine, using a server located in Florida, the fact that the server is located in Florida should not constitute nexus for the purposes of taxation. Neither the purchaser nor the company from which merchandise was purchased, nor the recipient, under this example, lived in Florida.

So, again, this language simply clarifies this matter. We do not state that the appearance of a catalog in someone's mailbox constitutes nexus. This provision simply updates that fact in the age of the Internet.

As technology bypasses us all and the use of the web becomes more and more ubiquitous and seamless, we will need to protect the technology that is fueling our economy. The issues of Quill and of who should and should not have to pay taxes will and should be settled by the Congress and the States. But regardless of that outcome, this technology should not be harmed by onerous, discriminatory, unfair—and in many cases—outdated laws.

To close, adoption of this amendment is vital to the passage of this legislation. This vote is key to its passage. If we fail to muster the 66 votes necessary, this bill will be dead. And as I have noted, some have wanted to kill it all along. We were forced to file cloture on the motion to proceed. We were forced to file cloture on the bill. We did all we could to accommodate all Senators with interests in this bill. We protected the rights of Senators to offer and debate amendments.

We did not have to allow the senior Senator from Arkansas an opportunity to offer non-germane amendments prior to cloture we did. We could have filled the tree or sat in quorum calls awaiting the cloture vote or final vote. But the Senate functions in a spirit of comity. So the Senator from Arkansas had his opportunity and his votes.

The bill has been changed and amended. We have accepted language offered by Senator HUTCHINSON from Arkansas. We accepted language offered by my good friend Senator ENZI. I did not care for those amendments, but I accepted the will of this body and I recognized that we must move forward on this important legislation. Especially on legislation like this, accommodations and concessions have to be made.

This bill does contain amendments which I wish were not in there, but there are 100 Members here. I also agreed to go along with the will of the majority, as did the Senator from North Dakota, as did the Senator from Oregon, and many other Senators who had deep and abiding interests in this legislation.

Again, this vote is exceedingly important if we are going to pass this bill. If we waive the rules for the purpose of this amendment, we can pass the bill and send it to the House. If we waive the rules, we can protect the Internet from unfair and discriminatory taxation, and more importantly, pass legislation that is vitally important to the country.

It is my understanding, and I ask parliamentary clarification, this motion is debatable; is that true?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. But there is still a time limit that each individual Senator is allowed under the postcloture proceedings?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. Parliamentary inquiry; how much time is remaining to the Senator from Florida?

The PRESIDING OFFICER. The Senator from Florida has 14 minutes remaining.

Mr. MCCAIN. I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. BUMPERS. Mr. President, will the Senator from Oregon yield for a parliamentary inquiry?

Mr. WYDEN. If that is all I am yielding for.

Mr. BUMPERS. How much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator from Arkansas has 36 minutes remaining.

Mr. BUMPERS. I thank the Chair, and I thank the Senator from Oregon.

Mr. WYDEN. Mr. President, I urge the Senate suspend the rules and pass this important amendment.

First, let's be clear what happens if this amendment is passed. The most important thing is that the grandfather on Internet tax provision that was so central to the States is preserved and preserved completely.

Second, there is a separate section to ensure that all other existing taxes are preserved, and that there is another provision that would ensure that all ongoing liabilities—the matter the Senator from Florida says is important to the State of Connecticut—is also preserved.

After we filed this amendment last night, we again reached out to all sides to try to address concerns. I have done this now for a year and a half. The original bill that came out of the Commerce Committee, by the time it came to the floor, had more than 30 major changes. In our efforts here now to be reasonable, we have made at least another 20 changes to try to accommodate the Senator from Florida and others. In fact, the definition of a discriminatory tax—which is what this is all about—is essentially that which was used in the House, and it was agreeable to the Governors and the States when it was debated there in the House. The reason that the Senator from Arizona and I have focused on this issue is that this definition of discrimination is essential to ensure technological neutrality.

What this definition does is straightforward. It ensures that the new technology and the Internet is not discriminated against. It makes sure that a web site is treated like a catalog; catalogs aren't taxed. We don't want web sites to be singled out for selective and discriminatory treatment. The provision also makes sure that Internet service providers are, in effect, treated like the mail. The mail isn't taxed when a product is shipped to your home from a catalog merchant. Similarly, the Internet service provider should not be taxed merely for being the carriers or transmitters of information. In effect, Senator COATS recognized this in his amendment that was adopted yesterday.

So what we have done is, yesterday, we have worked with the Senator from North Dakota, Senator ENZI, and others, to address this discriminatory tax question in a way that we thought would be agreeable to the States. Overnight, we tightened up the language to deal with the grandfathering question. The minority leader, Senator DASCHLE, made some important and, I thought, useful suggestions. We incorporated those this morning to make sure that when we talk about the grandfathering provision, as it relates to South Dakota and North Dakota, the grandfather provision would tightly protect those two States. We have done that.

This Senator finds now that if we do not prevail on this point and the bill goes down, all of these efforts now for a year and a half are going to leave us in a situation where I think we will see, with respect to the Internet and the digital economy, the same problems develop that cropped up with respect to mail order and catalogs. We have had a number of people at the State and local level saying, you know, with respect to the mail-order and catalog issue, we wish we had done what you are bringing about with respect to the Internet.

We know that we have to have sensible policies so we can protect some of

the existing sources of revenue for the States. Some call it the ''old economy''; I don't. I think they are extremely important to the States. We have to respect those, while at the same time writing the ground rules for the digital economy—the economy where the Internet is going to be the infrastructure and when every few months takes us to exciting new fields and increases dramatically in revenue.

So I hope our colleagues will not cause all of the other important work that has been done here to go down. That is Senator DODD's legislation and the important work done by Senator BRYAN. There is a host of good measures that we agreed to accept as part of this legislation in an effort to be bipartisan and to accommodate our colleagues.

But, once again, the goalposts are moving. The definition of discriminatory tax that came up in the House is essentially what we are using. The Governors and the States found that acceptable. And then, after taking that kind of approach, even last night, we moved again, at the request of colleagues—and we thought they were reasonable requests—to tighten up the grandfathering provision. Now is the time to make sure that we do not gut this bill, the definition of a moratorium, and particularly don't gut a concept that we think is acceptable to our colleagues, and that is the concept of technological neutrality.

When you vote for the McCain-Wyden amendment to suspend the rules and pass this, you will be voting for a solid grandfather provision that ensures that all existing taxes are preserved. You will be voting to protect ongoing liabilities, which is what the Senator from Florida said he is concerned about, along with the Senator from Connecticut, and others. You will be voting to make sure, in a separate section, that all other existing taxes other than Internet taxes are preserved, and you will be voting for the principle of technological neutrality.

I think it would be a great mistake to gut this legislation now after all this progress has been made. I represent a State with 100,000 small businesses. These businesses are a big part of the economic future that we all want for our constituents. They cannot afford a crazy quilt of taxes that would be applied by a good chunk of the Nation's 30,000 taxing jurisdictions, based on what we have seen during this debate.

Let's do this job right. Let's do it in a thoughtful and uniform way. I urge our colleagues to support this bipartisan amendment Senator MCCAIN and I have offered. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, for those here on the floor and those who may be watching this on C-SPAN, I apologize, because we are about to enter some very arcane and not particularly exciting discussion. But it is necessary in order to understand what this amendment does and what it doesn't do. First, what it doesn't do.

Mr. President, this amendment starts by saying on page 26 of the bill that is before us that we will strike lines 3 through line 5 on page 27. So for those of you who have access to the legislation, I ask if you will turn to those pages. If you don't have access to the amendment, I am going to make a statement.

Unfortunately, both of those who have spoken—well, Senator WYDEN is on the floor. I would like him to listen to this statement. If he feels I am misstating—since it is not my intention to have to read all of this language—would he please indicate where I am misstating. But as I read the amendment, with the exception of changing the numeration—that is, what was listed as an (a) in the Senate Finance committee language is listed as a small paragraph letter (i) in the McCain amendment number 3711. With the changes of those numerations, the words in the amendment are almost verbatim to the words that are being stricken from line 3 on page 26 through line 5 on page 27. Is that an accurate statement?

Mr. WYDEN. We are anxious to be responsive to the Senator from Florida, but we are having trouble locating this. Why don't we do this: Continue, if you will, with your address and we will try to get the page numbers right.

Mr. GRAHAM. If there is a difference, I will yield to indicate that. In my reading of the amendment, I cannot find any substantial difference between the language that was in the Finance Committee's draft and the language that is in this amendment. We are striking out on the one hand and reinserting on the other. The difference begins with a new subparagraph added by the amendment, which is subparagraph Roman numeral (iv), beginning on line 16 of page 2 of the amendment through line 22. It is my understanding that paragraph will be deleted.

Mr. WYDEN. We agreed to take that paragraph out yesterday.

Mr. GRAHAM. So that is not an issue of controversy.

And Roman numeral (v), which is the new language under discriminatory tax, is acceptable.

Two-thirds of the amendment that is offered is not in contest, either because it is in existing law—so whether we adopt the amendment or not, it is still going to be in the legislation—or it is acceptable.

All the controversy, therefore, focuses on page 3, lines 5 through 23, which is the language that has been referred to as the ''nexus'' language. This language essentially as presented in this amendment was before the Senate Finance Committee. It was reviewed by the Senate Finance Committee and, on the recommendation of both the majority and minority legal counsel, was stricken from the bill.

What was the basis, Mr. President, that the Finance Committee made such a recommendation to strike what is now the essence of lines 5 through 23 from this bill? These are the arguments that the Finance Committee was persuaded by. It determined that the areas of nexus, which relate to the subject of how much of a presence does an entity such as a business have to have in a State to make it subject to that State's tax authority. It determined that the areas of nexus were sufficiently clear under today's law that it was inappropriate to include such standards in Federal legislation.

The basis of nexus: As the Presiding Officer, who was a distinguished member of the State Senate of the State of Wyoming, knows and from his professional career as a CPA, nexus has traditionally been determined by State law, not by Federal law. Each State determines what is the necessary presence for taxation. There are, of course, limits as to State law under constitutional provision for interstate commerce. But within that standard, the States have been the determinative bodies.

According to the Finance Committee staff, there has only been one other Federal law, and that was passed 40 years ago, in 1959, which relates to the issue of federalization of what those standards of nexus would be.

So the essential position of the Finance Committee was, first, that this is a matter that was being properly dealt with at the State level, and that was not a compelling reason why we should federalize the issue of nexus.

Second, they found that no State is currently attempting to enforce a tax collection obligation on the basis of the circumstances outlined in amendment; therefore, there was no necessity for this federalization, and that it would lead to potentially increased litigation over the nuances of this language. I am going to talk about that in a moment.

Finally, that the enactment of this amendment would create special federalized rules for a very small subset of the retail community. And it is inappropriate—for a bill that is intended to cause a timeout, a pause, a moratorium, on State action to allow a commission to develop recommendations on appropriate rules for taxation—for us now to essentially preempt that whole process by federalizing a significant, albeit very niche, area of commerce.

So those are the reasons that the Senate Finance Committee voted to eliminate this language in the bill. Certainly the Finance Committee was not adverse to the thrust of the bill, because it passed the bill on a 19-to-1 vote. The idea that by failing to include this language we would be ''gutting'' the bill is, in my opinion, an extreme overstatement.

Mr. President, beyond those reasons that were given by the Finance Committee, there is also another set of concerns which have come to light as this

amendment has been increasingly in the public attention. That is the fact that there are States which either are or are potentially in litigation with various providers within the Internet industry over the question of their tax liability to a State. We have been sensitive to that in this legislation by providing a grandfather clause, which essentially protects the right of those States. As presented, this nexus amendment clause is retroactive, as the discriminatory tax definition in this bill is not covered by the general grandfather clause, and would apply to past events.

There is concern that the effect of this legislation would be to tilt the playing field in the courtroom of that litigation by making it more difficult on a retroactive basis for the States to make their arguments about an adequate nexus to the State as the basis of taxation of these Internet providers.

I don't think that this Congress wants to get into the business of intruding itself into ongoing litigation which might involve the State of Mississippi, or the State of North Dakota, or the State of Arizona, or the State of Florida, or any other State. That is not our business—to retroactively insert ourselves into that thicket of litigation.

Mr. President, it is for those reasons that I believe this amendment is defective. This Senate has adopted rules that provide that, after cloture has been invoked, the only amendments that can be considered are those that are germane to the bill.

The very fact that the sponsors of this amendment have filed what is a very unusual motion to suspend the Senate's rules as it relates to germanity is an indication that, first, they don't think it is germane; and, second, that under the rules of the Senate it should not be debatable in this postcloture environment.

As the managers and sponsors of this bill, they have had ample opportunity to get this language included throughout this long and tedious process. They have not done so. Now, in the postcloture environment, they are asking us to waive a fundamental rule of the Senate, which is, after cloture has been invoked, the cloture which was filed by the primary sponsor of the bill, now they want to be able to take up what is tacitly admitted to be a nongermane amendment, an amendment which was rejected after thorough analysis by the Senate Finance Committee, a measure which I think would have the effect of injecting us into litigation and affecting potential litigation between the States and various Internet providers.

Mr. President, I strongly urge my colleagues that we not adopt this motion, that we not change our rules, that we play by the rules that we have all agreed to, and that we play by the rules that have been in effect between States and the Internet industry in the past, and not retroactively reach back and adopt a provision which could interfere with the normal resolution of pending litigation.

Having said all of that, Mr. President, it is my hope that while this discussion has been going on, there have been good-faith efforts made to arrive at a resolution of this issue, and it would be my suggestion to have possibly a brief period by suggesting the absence of a quorum so that we might see if in fact we have arrived at a resolution that would obviate the necessity of the several steps that would be required in order to further pursue this matter. I think that would be in everybody's interest.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the role.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that amendment No. 3711 be withdrawn, and I send to the desk amendment No. 3711, with a modification.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 3711) was withdrawn.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

The PRESIDING OFFICER. The clerk will report the new amendment as so modified.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to Oct. 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online service is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. MCCAIN. Mr. President, let me say that I intend, after the Senator from Florida and the Senator from Oregon and the Senator from North Dakota and I speak on this, there is no controversy associated with it, that we would ask the amendment be agreed to. I would, at that time, request unanimous consent to withdraw my motion to suspend the rules.

The PRESIDING OFFICER. Is the Senator making that request at this time?

Mr. MCCAIN. I make that request at this time. I ask unanimous consent to withdraw my motion to suspend the rules.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion was withdrawn.

Mr. MCCAIN. Mr. President, I thank the Senator from Florida. This has been a tough battle. It has been a very difficult set of negotiations. We have disagreed on several issues, but we have reached a compromise. I thank him for his willingness to do that.

I also thank the good offices of the Senator from North Dakota whose calm demeanor has prevailed throughout this entire process we have been through. This amendment represents a compromise—another compromise—that has been made in the process of this legislation among ourselves and the Senator from Florida, and I thank him for it.

After the Senator from Florida and the Senator from Oregon speak, I hope we can adopt the amendment at that time. Then I hope we can go to final passage of this legislation.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, the areas that have been most recently discussed with respect to this legislation are arcane, complicated areas dealing with nexus, jurisdiction of tax and so on. There are not a lot of people who understand the nuances of all of those

words and all of the provisions. That is why it was hard to sift through all of this and reach an agreement. But an agreement has been reached that I think is a good agreement, one that accomplishes the purpose of this legislation in a manner that is not injurious to any other interests.

I thank the Senator from Arizona—I would say for his patience, but he is a Senator who is impatient to get things done on the Senate floor. I understand that and accept that, as do others. That is the reason he brings a lot of legislation to the floor and is successful with it.

I thank the Senator from Oregon who has been at this task for a long, long time and has been very determined to help get this legislation through the Senate.

Let me say to the Senator from Florida, one of the admirable qualities of that Senator, among many, is his stubborn determination to make certain that when things are done here, they are done the right way and that he understands it and that the interests affected are protected in a manner that is consistent with what he views as a matter of principle. I know that is frustrating for some, but the Senator from Florida certainly has that right. He contributes to this process by being determined to make certain we understand the consequences of all of this.

I thank him for working with us now in these final moments to reach an agreement that I think is the right agreement. We will pass this legislation, and I think we have accomplished something significant.

Mr. President, let me also indicate that my staff member, Greg Rohde, who has been working on these issues for many, many years with me, has done an outstanding job, as well as have other staff who have helped work through this process. I thank him for his work. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida.

Mr. GRAHAM. Mr. President, I understand I only have 22 seconds. I want to say some positive things. I ask that I may be yielded——

Mr. MCCAIN. I yield the Senator from Florida as much time as he may use from my time.

Mr. GRAHAM. Mr. President, I appreciate that generosity, and I will not overly indulge. Let me say, we have reached an honorable resolution to this issue which, for those who have been listening to this arcane debate, I will summarize by saying a significant issue will be made prospective in its application and not have retroactive application. Reading the language we have agreed to add to the McCain amendment 3711, which makes a portion of the nexus language prospective, in combination with the definition of ''tax on internet access,'' which was agreed to earlier, this amendment should not interfere with litigation between States and internet service providers. With that agreement, that has brought the various parties of interest into concurrence.

What I want to say, Mr. President, is the three people who have been particularly active on this issue, who are on the floor now—Senator MCCAIN of Arizona, Senator DORGAN of North Dakota, Senator WYDEN of Oregon—are three of the finest people with whom I have had the privilege to serve in public office. If America was going to judge the quality of its public officials, I would be happy to be judged by these three men.

As the Senator from Arizona said, we have had some degree of controversy, but that is the nature of the democratic process. If this were a passive and tranquil process where everybody voted 400 to 0, that would be reminiscent of the way in which the Soviet Union used to operate its parliament, not the U.S. Senate.

I think we have come to not only an appropriate resolution of this specific amendment, but I am proud where we are overall. We have achieved the purpose of having a reasonable period of timeout, with a thoughtful commission to be appointed to study some extremely complicated areas, the intersection of a legal system that is complex in areas of State-Federal relations, telecommunications and a highly complex new set of technologies.

This is an appropriate area for us to stand back and ask for the assistance of some thoughtful citizens who can bring their wisdom and experience to bear and give us the framework of some policy that then will be returned to the Senate and to the House of Representatives for enactment, as well as to the various State legislatures for their consideration.

I think we have, at the end of this process, arrived at exactly what our framers of this Constitution intended the legislative branch to do. I am proud to vote not only for this amendment but for the bill on final passage, and I look forward to the commission's work over the next several months and a return to these subjects in the year 2000 or 2002.

Again, I thank my colleagues for their very significant leadership in bringing us to this position.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Tyler Candee be accorded the privilege of the floor for the rest of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I also would like to take this opportunity to thank Mr. Russ Sullivan, who is legislative director in my office, and Kate Mahar, who has worked with him. They have been on a fast learning curve on these issues, fortunately, about 12 hours ahead of myself. I publicly thank them for their contribution to this final conclusion.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon.

Mr. WYDEN. Thank you very much, Mr. President. I think this may well be a historic day. What the U.S. Senate is doing is beginning to write the ground rules for the digital economy. As we have seen just in the last hour again, it is going to be a tough job.

We have had just in the last hour another set of questions that have come up with respect just to the terminology that is used in this new field. For example, some States call an Internet access tax a tax on on-line services.

What we have done now as a result of the agreement among the Senator from Arizona, the Senator from North Dakota, the Senator from Florida and myself, is we have said that we are going to treat those terms the same way when, in fact, they have the same effect. I think that this exercise, while certainly laborious and difficult, is just an indication of the kind of challenges we have to overcome.

I thank particularly the Senator from Florida. He feels very strongly about this issue and has made the case again and again to me that it is important to do this job right, and I share his view. I thank him for his courtesies.

The Senator from North Dakota and I have been debating this legislation now for a year and a half, probably at a much higher decibel level than either of us would have liked.

The chairman of the committee, Chairman MCCAIN, and I have been friends for almost 20 years now. For this freshman Senator—not even a full freshman, an arrival in a special election—to have a chance to team up on this important piece of legislation is a great thrill. I thank him and his staff for all of their courtesies.

Before I make any final comments, I want to thank Ms. Carole Grunberg of our office who again and again, when this legislation simply did not look like it could go forward, persisted. And she, along with Senator DORGAN's staff and Senator MCCAIN's staff, has helped to get us to this exciting day.

I am particularly pleased, Mr. President—I will wrap up with this—for the benefits that this legislation is going to have for people without a lot of political power in America. I think about the 100,000 home-based businesses I have in my State. I think about the disabled folks who are starting little businesses in their homes. For them, the Internet is the great equalizer. It allows people who think of themselves as the little guy to basically be able to compete in the global economy with the big guys.

Unless we come up with some ways to make uniform some of these definitions and terms, which is what we have been trying to do in the last hour—and we have made some real headway and reached a success—those little guys are going to find it hard to compete.

So I look forward to continuing the discussions with our colleagues as we look to other questions with respect to the Internet. This, it seems to me, is just the beginning of the discussion rather than the end.

Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I again thank Senator WYDEN, Senator DORGAN, the Senator from Florida, Senator GRAHAM, and all who were involved in this very difficult and very complex issue. I also thank my staff—all of them, including Mark Buse.

I also would like to add to the comments of the Senator from Florida, Senator GRAHAM, who said this is how the process should work. It has been very tough, very difficult, very time-consuming, but I think the magnitude of the legislation we are considering probably warranted all of that—and perhaps more. So I thank him very much. And as far as the freshman from Oregon is concerned, he has certainly earned his spurs as a member of the Commerce Committee.

By the way, I also thank the Chair for his involvement in this issue. He is probably the most computer literate Member of the U.S. Senate. We obviously value his talent and expertise and look forward to the day when he has his laptop on the floor for its use that so far we have failed to achieve but someday I hope we do.

I also mention one other person, Congressman COX over in the other body, who has also played a key role in the development of their legislation on the other side. He has done a tremendous job, Congressman COX of California.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3711, as modified.

The amendment (No. 3711), as modified, was agreed to.

AMENDMENT NO. 3718, AS FURTHER MODIFIED

Mr. MCCAIN. I send to the desk a modification to amendment No. 3718 and ask unanimous consent that it to be adopted. Mr. President, the situation is that some written language that had been included in that amendment was not legible in the printer, so we had to remodify it.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3718), previously agreed to, as further modified, follows:

On page 29, beginning with line 20, strike through line 19 on page 30 and insert the following:

(8) TAX.—

(A) IN GENERAL.—The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services; unless such tax was generally imposed and actually enforced prior to October 1, 1998.

Mr. KERRY. I'd like to take a moment to express my strong support for S. 442, the Internet Tax Freedom Act. In my view, S. 442 is a necessary first step to ensure that the Internet remains user-friendly to persons and businesses who seek to use it as a primary forum in which to conduct commerce. Before I begin, I'd like to credit my colleague from Oregon, Senator WYDEN, for his hard work on this legislation and for his longtime and pioneering leadership on Internet issues, both when he was in the House and now as a member of the Commerce Committee in the Senate. I'd also like to thank Senator MCCAIN for his steadfastness and determination in ensuring that this important legislation is considered by the full Senate.

The Internet holds great promise to expand prosperity and bring ever more Americans into the national economy. In the past, to open a store and sell goods to the public, a merchant needed to find a good location for a storefront, build-out the store front, maintain its interior, pay rent and deal with myriad other business and legal concerns. All of these actions consume time and often scarce resources. To many Americans, they present an unreachably high bar to starting or maintaining a business. The Internet will allow millions of Americans to sell goods and services online, and will dispense with many of the burdensome costs involved with starting and maintaining a business. One great impediment, however, to the evolution of commerce over the Internet is the immediate threat of both disparate taxing jurisdictions and inequitable taxation.

A product offered over the Internet can be purchased by anyone with a computer and a modem, regardless of the town or state in which the person lives. Imagine needing to know the tax consequences of selling to each of the thousands of taxing jurisdictions in the country as a prerequisite to starting a business. This problem becomes even more complex if states and localities begin to impose taxes on electronic transactions or transmissions as such, in addition to sales, use and other taxes.

This legislation attempts to reasonably address this concern by imposing a brief moratorium specifically on the inequitable taxation of electronic commerce. It will allow the federal government, the states, the Internet industry and Main Street businesses a brief time-out to rationally discuss the several issues involved in Internet taxation and to develop a reasonable approach to taxation which permits electronic commerce to thrive in America. In my view, the legislation does not seek to deprive states of needed tax revenue. Senators WYDEN and MCCAIN have gone to great lengths to minimize those existing taxes that would be affected. In addition, the bill expressly grandfathers existing state taxes on Internet access. What the bill does, however, is attempt to ensure that the development of the Internet is not hampered by a hodge-podge of confusing state and local taxes.

This bill was carefully negotiated to address competing equities. States and localities certainly have very real and legitimate needs to raise revenue to support vital state and community functions. By the same token, the Internet and the promise it holds for our economy, for schools, for children and families, and for our democracy is also very compelling. It is a wholly new medium whose mechanics, subtleties and nuances few of us really understand. I do not hear any Senator stating that electronic commerce should never be the basis of tax revenue, and I do not believe any Senator is trying to permanently deprive states of inherent privileges. Instead, the bill strives to create a brief period during which we in government and those in business can attempt to better understand this new medium and create a sensible policy that permits the medium to flourish as we all want.

I urge my colleagues to support this bill.

Mr. ROTH. Mr. President, I rise to express my support for the Internet Tax Freedom Act. This legislation imposes a temporary moratorium on taxes relating to the Internet and establishes a Commission to study and make recommendations for international, Federal, state, and local government taxes of the Internet and other comparable sales.

This legislation reflects the exciting times in which we live—a time when commerce between two individuals located a thousand miles apart can take place at the speed of light. Today, names like Netscape, Amazon.com, Yahoo, and America On-Line are household names—each a successful company in a new and exciting global

business community. And they are only a few of literally thousands who provide their goods and services over the Internet.

They compete in a world where technological revolutions take place on a daily basis, and they benefit the lives of families everywhere. Even in America's most remote communities, our children have access to the seven wonders of the world, to metropolitan art museums, electronic encyclopedias, and the world's great music and literature. These companies—and the countless companies like them—are pioneers. And the new frontier is exciting, indeed.

In the new realm of cyberspace, government has three choices: lead, follow, or get out of the way. The legislation we introduce today is a clear indication that government is prepared to lead. It demonstrates that Congress is not going to allow haphazard tax policies, and a lack of foresight to get in the way of the growth and potential of this new and promising medium. It makes it clear that government's interaction with Internet commerce will be well-considered and constructive—beneficial to future prospects of Internet business and the individuals they service.

From the introduction of the Internet Tax Freedom Act, in early 1997, members of the Finance Committee expressed keen interest in considering this legislation. The Finance Committee has clear jurisdiction over state and local taxes—it's also the place for trade issues. And this July, we received a referral of the bill. We conducted a hearing on the issues and listened to witnesses detail the growth and potential of the Internet. Witnesses also articulated the many sides and concerns associated with the tax implications of Internet commerce.

Following our hearing, the Finance Committee held a markup, where we approved an amendment in the nature of a substitute to the original bill reported out of the Commerce Committee. The Finance Committee made significant improvements to the original legislation. We beefed up the trade component of the bill. We directed the USTR to examine and disclose the barriers to electronic commerce in its annual report. And we declared that it is the sense of Congress that international agreements provide that the Internet remain free from tariffs and discriminatory taxation.

The Finance Committee's substitute also shortened the moratorium period on State and local taxes relating to the Internet. We did this with an understanding that the advisory commission, set up in the legislation, would not need the five year period that was set out in the original Commerce bill. At the same time, we streamlined the Advisory Committee and focused its study responsibilities.

We took out any grandfather provision, feeling that as a policy matter, there should not be any taxes on the Internet during the moratorium period—regardless of whether some States had jumped the gun and applied existing taxes to Internet access. The Finance Committee also felt that this bill should be an example to our international negotiating partners—that if we wanted to keep grandfather provisions out of the international agreements, that we should remove them from our domestic taxation.

I recognize that there have been various floor amendments that have changed some of the things we did in the Finance Committee. Despite those amendments, the central thrust of the legislation, which is to call a time-out while a commission assesses the Internet and makes some recommendations about how we should tax electronic commerce, remains. Important international provisions—relating to trade and tariff issues—also remain unchanged.

Mr. President, I support the Internet Tax Freedom Act. It is a demonstration of Congress' understanding of the exciting potential and the opportunities that will be realized in cyberspace. It is a thoughtful approach to a very important issue. It meets current needs, and allows continued growth in this new frontier. I hope my colleagues will join me in supporting it.

Mr. MOYNIHAN. Mr. President, I first want to thank the Chairman of the Finance Committee, Senator ROTH, for his insistence that the Internet Tax Freedom Act be considered by the Finance Committee before any action on this floor. I recognize and applaud all of the effort that has gone into the other proposals dealing with this subject, and in particular we should acknowledge the work of Senators WYDEN, MCCAIN, DORGAN, GRAHAM, LIEBERMAN, and GREGG.

Since June of 1997, the chairman and I sought referral of this legislation to give the Finance Committee the opportunity to consider the important tax and trade issues related to the Internet, which by some estimates will grow to $300 billion of commercial transactions annually by the year 2000. The bill was finally referred to the Finance Committee on July 21st of this year.

That referral to the Finance Committee was consistent with Senate precedents. In recent years, the Finance Committee has had jurisdiction over at least two other pieces of legislation with direct impact on state and local taxes. Both the ''source tax'' bill that was of great interest to Senators BRYAN, REID, and BAUCUS, prohibiting states from taxing the pensions of former residents, and Senator BUMPERS' mail order sales tax proposal, requiring mail order companies to collect and remit sales taxes due on goods shipped across state lines, were referred to the Finance Committee.

The legislation before us today also deals directly with international trade. It requests that the administration continue to seek trade agreements that keep the Internet free from foreign tariffs and other trade barriers. As reported by the Finance Committee, this bill would establish trade objectives designed to guide future negotiations over the regulation of electronic commerce—issues clearly within the Finance Committee's jurisdiction.

A few comments on the substance of this legislation. I am not entirely persuaded that there is a pressing need for a federal moratorium on the power of state and local governments to impose and collect certain taxes, but it seems clear that such a moratorium does enjoy a great deal of support. The two-year moratorium period in the Finance Committee bill and the three-year period agreed to as a floor amendment during this debate is surely preferable to the six-year provision in the Commerce Committee bill.

There is some question whether such a moratorium is actually necessary. New York is proof that States do not need a directive from Congress to act on this matter: Governor Pataki and the New York State legislature have agreed on a bill exempting Internet access services from State or local sales, use, and telecommunications taxes. The Governor's legislation also makes it clear that out-of-state businesses will not be subject to State or local taxes in New York solely because they advertise on the Internet.

I am pleased that the Finance Committee's bill preserves the right of States or local governments to collect tax with respect to transactions occurring before July 29, 1998 (the date of Finance Committee action). Further, I am pleased that language has been added on the floor that goes beyond the Finance Committee bill and ''grandfathers'' any existing State and local taxes on Internet activity occurring during the period of the moratorium.

With respect to the Advisory Commission on Electronic Commerce established, a membership of 16, almost half of that in the House bill, is manageable and is more likely to lead to meaningful recommendations. An item of particular interest to me is the requirement in that the Commission examine the application of the existing Federal ''communications services'' excise tax to the Internet and Internet access. We need to know more about how and whether that tax should apply to new technology.

This bill is not perfect, but on balance I believe it deserves our support. I urge its adoption and hope it can be enacted this year.

Mr. LOTT. Mr. President, I am pleased to rise in support of the Senate's overwhelming passage today of the Internet Tax Freedom Act. This bill represents several months of thoughtful consideration and discussion among Members on both sides of the aisle to address the tax treatment of this emerging medium of commerce.

Throughout history, innovations in technology have dramatically changed lifestyles. Today, it is the Internet changing lives, and unlike any other

technology to date. It is connecting people all around the world in ways that no one at the Department of Defense ever conceived of when the network was created. It is a true testament to the fact that leadership and entrepreneurial drive is alive and well in America.

This new tool of communication and information is also fast becoming one of the most important and vibrant marketplaces in decades. It holds great promise for businesses, both large and small, to offer their products and services for sale to a worldwide market. This is good news for everyone. It means new jobs, new opportunities and choices for consumers and retailers, and ultimately more revenue for state and local governments.

Mr. President, by its very nature, the Internet does not respect the traditional boundaries of state borders or county lines used to define our tax policies today. With about 30,000 taxing jurisdictions all across America, a myriad of overlapping and burdensome taxes is a legitimate concern for consumers and businesses online. This issue needs to be explored and resolved.

The Internet Tax Freedom Act is about the potential of technology.

It is about taking a necessary and temporary time-out so that a Commission of government and industry representatives can thoroughly study electronic commerce and make sensible recommendations to Congress about a fair, uniform and consistent Internet tax structure. The moratorium will apply to discriminatory and multiple taxes as well as to taxes paid just to access the Internet.

This legislation will treat Internet sales the same as any other type of remote sale. It will not favor the Internet or disadvantage others.

Businesses and consumers using electronic commerce need and deserve some level of assurance and sense of uniformity about how they will be taxed.

Mr. President, over the past several months, I personally heard from governors and groups across the nation who expressed serious concerns about the hindering effect on electronic commerce due to ambiguous and conflicting tax treatment. I also heard from others expressing concerns about raising revenue and providing services to their citizens. Both voiced support for passage of a balanced bill that would represent their views. Adequate time was allowed for the Senate to hear what they had to say, and their concerns are reflected in the amendments and in the final bill.

Internet taxes, like many other issues faced in Congress, is not without controversy. The spirited exchange on the Senate floor during the past several days is evidence of that. I respect the differences that have been debated. I recognize the delicate balance in many of the views expressed, and appreciate the good faith efforts of my colleagues in working together to reach consensus. I know it was not easy.

Passage of this legislation was made possible by the hard work of many people.

First, I commend Senator John MCCAIN, Chairman of the Senate's Commerce Committee, for his diligent leadership and commitment to tackle this complex and contentious issue. He has been steadfast throughout this process, and to him I say thank you.

I also owe a debt of gratitude for the work and contributions of the Chairman of the Senate's Finance Committee, Senator BILL ROTH. He provided a fresh perspective on the issue of electronic commerce.

Clearly, the participation of several Members with diverse interests was integral in moving this bill forward. I am proud to see Senators from both sides of the aisle—Senator BYRON DORGAN, Senator JUDD GREGG, Senator TIM HUTCHINSON, Senator JOE LIEBERMAN, and Senator RON WYDEN—all work together in a respectful manner to get the job done.

Nothing is ever accomplished in the Senate without the dedicated efforts of staff. I want to take a moment to identify those who worked hard to prepare this legislation for consideration. From the Senate Commerce Committee: Mark Buse, Jim Drewry, Carol Grunberg, Paula Ford, Kevin Joseph, John Raidt, Mike Rawson, and Jessica Yoo. From the Finance Committee: Stan Fendley, Keith Hennessey, Jeffrey Kupfer, Brigitta Pari, Frank Polk, and Mark Prater. Other individuals participated on behalf of their Senators: Renee Bennett, Laureen Daly, Richard Glick, Hazen Marshall, Greg Rhode, Mitch Rose, Stan Sokul and Russell Sullivan. I thank them all for their efforts.

Mr. President, the current power of the Internet and its future potential will advance America into the next millennium. Passage of the Internet Tax Freedom Act is a crucial step in recognizing the significance of the Internet in electronic commerce and what it will mean in the lives of every American consumer, to American businesses, and to America's economy.

Mr. LEAHY. Mr. President, I want to add my own support to promoting electronic commerce and keeping it free from new Federal, State or local taxes. I am a cosponsor of the Internet Tax Freedom Act, S. 442.

In ways that are becoming increasingly apparent, the Internet is changing the way we do business. More than 50 million people around the world surf the net—50 million. And more and more of these users turn to the World Wide Web and the Internet to place orders with suppliers or to sell products or services to customers or to communicate with clients.

The Internet market is growing at a tremendous pace. Over the past 2 years, sales generated through the web grew more than 5,000 percent. In fact, in a recent Business Week article, electronic commerce sales are estimated to reach $379 billion by the year 2002, pumping up the Nation's gross domestic sales by $10 to $20 billion every year by 2002.

And I see it in my own State of Vermont. On my home page on the web, I have put together a section called ''Cyber Selling In Vermont.'' It is a step-by-step resource guide for exploring how you can have on-line commerce and other business uses of the Internet. It has links to businesses in Vermont that are already cyberselling.

As of today, this site includes links to web sites of more than 100 Vermont businesses doing business on the Internet. They range from the Quill Bookstore in Manchester Center to Al's Snowmobile Parts Warehouse in Newport.

For the past 3 years, I have held annual workshops on doing business on the Internet in my home State. I have received a tremendous response to these workshops from Vermont businesses of all sizes and customer bases, from Main Street merchants to boutique entrepreneurs.

At my last Doing Business on the Internet Workshop in Vermont, we had these small business owners from all over our State. They told how successful they have been selling on the web. They had such Main Street businesses as a bed and breakfast, or in one case a wool boutique, and a real estate company. One example is Megan Smith of the Vermont Inn in Killington. She attended one of my workshops. Now she is taking reservations over the net, reservations not just from Vermont, but from throughout the country. So cyberselling pays off for Vermonters.

Now Vermont businesses have an opportunity to take advantage of this tremendous growth by selling their goods on line. I have tried to be a missionary for this around our State, because I believe the Internet commerce can help Vermonters ease some of the geographic barriers that historically have limited our access to markets where our products can thrive.

The World Wide Web and Internet businesses can sell their goods all over the world in the blink of an eye, and they can do it any time of the day or night.

As this electronic commerce continues to grow—for even a small State like mine; we can see it all over the country—I hope we in Congress can be leaders in developing tax policy that will nurture this new market. I followed closely the Internet Tax Freedom Act since Senator WYDEN introduced it last summer. I want to commend the senior Senator from Oregon for his leadership on cyber tax policy.

More than 30,000 cities and towns in the United States are able to levy discriminatory sales on electronic commerce. Because of that, we need this national bill to provide the stability necessary if this electronic commerce is going to flourish.

We are not asking for a tax-free zone on the Internet. If sales taxes and

other taxes would apply to traditional sales and services under State or local law, then those taxes would also apply to Internet sales under our bill. But the bill would outlaw taxes that are applied only to Internet sales in a discriminatory manner.

We do not want somebody to kill these businesses before they even begin because they think it is some way they can pluck the money out of the pockets of those who are using the Internet. We should not allow the future of electronic commerce—electronic commerce that can greatly expand the markets of even our Main Street businesses—we should not allow it to be crushed by the weight of multiple taxation. Without this legislation, they would have faced multiple taxation, and a lot of these Internet businesses now creating jobs, now flourishing, now adding to the commerce of our States would have been wiped out of business.

This legislation creates a temporary national commission to study and recommend appropriate rules for international, Federal, State, and local government taxation of transactions over the Internet. This also will help us very, very much.

The commission would submit its findings and recommendations to Congress within the next 18 months. With the help of this commission, Congress should be able to put a tax framework in place to foster electronic commerce and protect the rights of state and local governments when the three-year moratorium ends.

During my time in the Senate, I always tried to protect the rights of Vermont state and local legislators to craft their laws free from interference from Washington. Thus, the imposition of a broad, open-ended moratorium on state and local taxes relating to the Internet in the original bill gave me pause. I certainly agreed with the goal of no new state and local taxation of online commerce, but the means were questionable.

I believe those questions have been fully answered by the changes made to this legislation during its consideration in the Commerce and Finance Committees.

I want to commend Senators BURNS, KERRY, MCCAIN, MOYNIHAN and ROTH for working with Senator WYDEN, the sponsor of the original bill, to craft a substitute bill that protects the free flow of online commerce while accommodating the rights of state and local governments.

Today there are more than 400,000 businesses selling their sales and services on the World Wide Web around the world. This explosion in web growth has led to thousands of new and exciting opportunities for businesses, from Main Street to Wall Street. The Internet Tax Freedom Act will ensure that these businesses, and many others, continue to reap the rewards of electronic commerce.

Mr. President, I am proud to cosponsor the Internet Tax Freedom Act to foster the growth of online commerce and urge my colleagues to support its swift passage into law.

Mr. LIEBERMAN. Mr. President, I want to say how pleased I am that this chamber has finally come to agreement on S. 442, the Internet Tax Freedom Act. First, I would like to thank Senator WYDEN for introducing this bill and his perseverance to see this legislation through. I would like to thank Chairman MCCAIN for his management of this bill, and Senator DORGAN for working so closely with Senator WYDEN to arrive at a compromise. I would like to thank Senator GREGG for his unwavering insistence on what he believes is right. I would like to acknowledge the efforts of Senator BUMPERS and Senator GRAHAM who come to this issue from a different viewpoint but have tried to seek a common ground in what has been a polarizing and difficult negotiation.

I truly believe the most important things accomplished by this bill will be, first, to raise the visibility of the issue of taxation of the Internet. Just having this debate in Congress has stimulated discussion and thought about the future of electronic commerce and the Internet throughout the country. Three states—Texas, South Carolina, and my home State of Connecticut—came forward and said that they did not want their States' taxes to be grandfathered into the tax moratorium, but instead preferred to stop taxing the Internet. This debate has raised the consciousness of public leaders as to the great benefits electronic commerce holds for U.S. business to improve its productivity and reach new customers, and even more importantly, the level playing field the Internet provides for small businesses. At the same time, we have become aware of the enormous problems faced by small businesses which are suddenly, over the net, selling beyond their physical reach and the uncertainties they face in the legal and tax environment in 30,000 taxing jurisdictions.

The second major benefit of this bill will be to slow down the taxation of the Internet. The moratorium in S. 442, while grandfathering in existing State taxes on Internet access, will prevent new taxes from being added.

The third, and I consider the most important, major benefit of this legislation will be the creation of a commission to draft model State legislation creating uniform categories for these new Internet companies and transactions that gives these firms some certainty as to how they will be treated tax-wise in the different States. This is the essence of the bill that Senator GREGG and myself introduced in March, called NETFAIR, S. 1888—to remove the uncertainty under which electronic commerce companies have had to operate in the United States and bring some order into the present business climate. It is our intent that this model State legislation would not preempt the States, but would be adopted by the States, at their choice.

The Senate agreed to expand the duties of the commission beyond that of drafting model State legislation to looking at the States' collection of use taxes on all remote sales. This is a legitimate area of study and of concern to the States and to their revenue base. In opposing this amendment, I was merely voicing my concern that the commission may become bogged down in a debate over the taxation of catalog sales that I fear it will not be able to stay focused on the Internet and accomplish the very useful purpose of helping create a predictable legal environment for electronic commerce. It is my hope that the commission will try to complete the draft State legislation outlined in S. 442 first before turning to this larger debate.

At this point, I want to thank Senators ROTH and MOYNIHAN and the rest of the Finance Committee members for adding the international element to this bill. The Finance Committee reminded us to consider our domestic policies toward the Internet in the context of the international environment. Just as the Internet puts small companies on an equal footing with large companies, it also is creating a new level playing field internationally. Developing countries that have not yet fully industrialized, and countries whose telephone penetration is only a fraction of that in the United States, can leap frog entire stages of technology and move straight into fiber optic and wireless technologies that will carry video, sound, data, and voice.

A number of my colleagues and I have had an opportunity to speak with John Chambers, the President and CEO of Cisco Systems, one of the major suppliers of networking equipment at a breakfast last week. He knows something about electronic commerce since his company accounted for one-third of all electronic commerce last year. I was very impressed when he said that, on his trip through Asia, the political leaders of Singapore, Malaysia, Hong Kong and China wanted to hold substantive one- to two-hour conversations with him because they understand the power on the Internet and understand that information technology will change, not just their country's economy, but the economy of the world. They understand that those countries that embrace the information age will prosper and those who don't will fall behind.

Once again, Mr. President, I want to thank my colleagues and their staffs for the extraordinary effort they made to reach this point where we can finally vote on this bill. Finally, I would like to thank Laureen Daly of my staff who put in an enormous amount of work to assure that Connecticut's constituents, businesses and government will benefit from this legislation.

Mr. WARNER. Mr. President, I rise to restate my strong support for the Internet Tax Freedom Act. I am proud to be a cosponsor of this legislation

and pleased that with end the 105th Congress legislation that brings fairness and equitable tax treatment to hundreds of Virginia Internet and online companies.

It has been a difficult week, but we have succeeded reaching a resolution on this most important issue. This moratorium is critical to the development of an industry that has become a pillar of Virginia's, and our Nation's, economy.

I will ask a resolution passed earlier this year expressing the sense of the General Assembly of Virginia that the Internet should remain free from State and local taxes.

Mr. President, I also wish to commend Governor Jim Gilmore. He has been a tireless advocate and a true leader on this issue. He was one of a handful of governors to recognize the potential of this industry and the irreparable harm that could come to it at the hands of tens of thousands of tax collectors across the Nation. He shares my view that we will remain the leader in the information technology industry only as long as we pursue policies of lower taxes and less regulation—policies that have made Virginia such an attractive home to thousands of high tech companies and their employees.

HOUSE JOINT RESOLUTION NO. 36

Expressing the sense of the General Assembly of Virginia that services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth or its political subdivisions.

Agreed to by the House of Delegates, February 17, 1998; agreed to by the Senate, March 10, 1998.

Whereas, services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, have provided immeasurable social, educational, and economic benefits to the citizens of Virginia, the United States, and the world; and

Whereas, technological advancements made by and to the Internet and other related electronic communication services, as well as data and software transmitted via such services, develop at an ever-increasing rate, both qualitatively and quantitatively; and

Whereas, these advancements have been encouraged, in part, by public policies which facilitate technological innovation, research, and development; and

Whereas, companies which provide Internet access services and other related electronic communication services are making substantial capital investments in new plants and equipment; and

Whereas, it has been estimated that consumers, businesses, and others engaging in interstate and foreign commerce through the Internet or other related electronic communication services could be subject to more than 30,000 separate taxing jurisdictions in the United States alone; and

Whereas, multiple and excessive taxation places such investment at risk and discourages increased investment to provide such services, which, in turn, could put such jurisdictions at a long-term social, educational, and economic disadvantage; and

Whereas, the growth and development of electronic communication services should be nurtured and encouraged by appropriate state and federal policies; and

Whereas, the Commonwealth's exercise of its taxation and regulatory powers in relation to electronic communication services would likely impede the future viability and enhancement of Internet access services and other electronic communication services in the Commonwealth, which, in turn, could restrict access to such services, as well as data and software transmitted via such services, for all Virginians; and

Whereas, previous rulings of departments of taxation or revenue in several states have resulted in state taxes being levied on Internet service providers or Internet-related services, and have, in some cases, prompted action by those states' legislatures to overturn such rulings; and

Whereas, a majority of the states that have addressed the issue of taxing Internet-related services have chosen to exercise restraint in taxing Internet service providers and Internet-related services; and

Whereas, Virginia's existing tax code (§58.1–609.5) exempts from retail sales and use tax purchases of services where no tangible personal property is exchanged; and

Whereas, pursuant to §58.1–609.5, the Commissioner of the Department of Taxation has promulgated regulations (Title 23 Virginia Administrative Code 10–210–4040) which provide that charges for services generally are exempt from retail sales and use tax, but that services provided in connection with sales of tangible personal property are taxable; and

Whereas, in interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97–405, October 2, 1997); and

Whereas, in further interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that providers of Internet access services and other electronic communication services are not subject to Virginia's retail sales and use tax (P.D. 97–425, October 21, 1997); and

Whereas, services which provide access to the Internet and other related electronic communication services, as well as data and software transmitted via such services, are not tangible personal property and, therefore, should not be subject to Virginia's retail sales and use tax: now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved further, That P.D. 97–405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That P.D. 97–425 (October 21, 1997), by which the Commissioner ruled that providers of Internet access services and other related electronic communication services are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That, to the greatest extent possible, future rulings of the Commissioner reflect the sense of the General Assembly that Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved finally, That the Clerk of the House of Delegates transmit a copy of this resolution to the Commissioner of the Department of Taxation that he may be apprised of the sense of the General Assembly in this matter.

Mr. MCCAIN. Mr. President, I ask unanimous consent that no further amendments be in order to S. 442, the Senate proceed immediately to third reading, and final passage then occur, without debate, and I further ask that the final passage vote occur now, and that paragraph 4 of rule XII be waived.

And, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER. (Mr. KYL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—96

Abraham	Faircloth	Lugar
Akaka	Feingold	Mack
Allard	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Graham	Moseley-Braun
Biden	Gramm	Moynihan
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Boxer	Gregg	Nickles
Breaux	Hagel	Reed
Brownback	Harkin	Reid
Bryan	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hutchinson	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Cleland	Inouye	Sarbanes
Coats	Jeffords	Sessions
Cochran	Johnson	Shelby
Collins	Kempthorne	Smith (NH)
Conrad	Kennedy	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kerry	Specter
D'Amato	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Torricelli
Dorgan	Levin	Warner
Durbin	Lieberman	Wellstone
Enzi	Lott	Wyden

NAYS—2

Bumpers	Gorton

NOT VOTING—2

Glenn Hollings

The bill (S. 442), as amended was passed, as follows:

S. 442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Freedom Act''.

TITLE I—MORATORIUM ON CERTAIN TAXES

SEC. 101. MORATORIUM.

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act—

(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

(2) multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.

(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

(e) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(E) INTERNET INFORMATION LOCATION TOOL.—The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) SEXUAL ACT; SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18, United States Code.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms ''telecommunications carrier'' and ''telecommunications service'' have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(f) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) INTERNET ACCESS SERVICES.—The term 'Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) SCREENING SOFTWARE.—The term ''screening software'' means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

SEC. 102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ''Commission''). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of

aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act.

(f) RULES OF THE COMMISSION.—

(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

(g) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

(A) an examination of—

(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;

(D) an examination of model State legislation that—

(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

SEC. 103. REPORT.

Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

SEC. 104. DEFINITIONS.

For the purposes of this title:

(1) BIT TAX.—The term ''bit tax'' means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

(3) ELECTRONIC COMMERCE.—The term ''electronic commerce'' means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(4) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(5) INTERNET ACCESS.—The term ''Internet access'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

(6) MULTIPLE TAX.—

(A) IN GENERAL.—The term ''multiple tax'' means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term ''sales or use tax'' means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

(7) STATE.—The term ''State'' means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(8) TAX.—

(A) IN GENERAL.— The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the

Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.

TITLE II—OTHER PROVISIONS

SEC. 201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 101(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

SEC. 202. NATIONAL TRADE ESTIMATE.

Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii); and

(iii) by inserting after clause (ii) the following new clause:

''(iii) United States electronic commerce,''; and

(B) in subparagraph (C)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii);

(iii) by inserting after clause (ii) the following new clause:

''(iii) the value of additional United States electronic commerce,''; and

(iv) by inserting ''or transacted with,'' after ''or invested in'';

(2) in subsection (a)(2)(E)—

(A) by striking ''and'' at the end of clause (i);

(B) by inserting ''and'' at the end of clause (ii); and

(C) by inserting after clause (ii) the following new clause:

''(iii) the value of electronic commerce transacted with,''; and

(3) by adding at the end the following new subsection:

''(d) ELECTRONIC COMMERCE.—For purposes of this section, the term 'electronic commerce' has the meaning given that term in section 104(3) of the Internet Tax Freedom Act.''.

SEC. 203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) IN GENERAL.— It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

(1) to assure that electronic commerce is free from—

(A) tariff and nontariff barriers;

(B) burdensome and discriminatory regulation and standards; and

(C) discriminatory taxation; and

(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) ELECTRONIC COMMERCE.—For purposes of this section, the term ''electronic commerce'' has the meaning given that term in section 104(3).

SEC. 204. NO EXPANSION OF TAX AUTHORITY.

Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

SEC. 205. PRESERVATION OF AUTHORITY.

Nothing in this Act shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) or the amendments made by such Act.

SEC. 206. SEVERABILITY.

If any provision of this Act, or any amendment made by this Act, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.

TITLE III—GOVERNMENT PAPERWORK ELIMINATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the ''Government Paperwork Elimination Act''.

SEC. 302. AUTHORITY OF OMB TO PROVIDE FOR ACQUISITION AND USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

''(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.''.

SEC. 303. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

(a) IN GENERAL.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.—(1) The procedures developed under subsection (a)—

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

SEC. 304. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide—

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

SEC. 305. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

SEC. 306. STUDY ON USE OF ELECTRONIC SIGNATURES.

(a) ONGOING STUDY REQUIRED.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

SEC. 307. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

SEC. 308. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

SEC. 309. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

SEC. 310. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person's approval of the information contained in the electronic message.

(2) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

TITLE IV—CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Children's Online Privacy Protection Act of 1998''.

SEC. 402. DEFINITIONS.

In this title:

(1) CHILD.—The term ''child'' means an individual under the age of 13.

(2) OPERATOR.—The term ''operator''—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DISCLOSURE.—The term ''disclosure'' means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) FEDERAL AGENCY.—The term ''Federal agency'' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) PARENT.—The term ''parent'' includes a legal guardian.

(8) PERSONAL INFORMATION.—The term ''personal information'' means individually identifiable information about an individual collected online, including—

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) VERIFIABLE PARENTAL CONSENT.—The term ''verifiable parental consent'' means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN.—

(A) IN GENERAL.—The term ''website or online service directed to children'' means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) LIMITATION.—A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) PERSON.—The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) ONLINE CONTACT INFORMATION.—The term ''online contact information'' means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

SEC. 403. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.—Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) TERMINATION OF SERVICE.—The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) ENFORCEMENT.—Subject to sections 404 and 406, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) INCONSISTENT STATE LAW.—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

SEC. 404. SAFE HARBORS.

(a) GUIDELINES.—An operator may satisfy the requirements of regulations issued under section 403(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) INCENTIVES.—

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 403, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 403 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 403.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) APPEALS.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 405. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 403(b), the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 403, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 406. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 403 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

(e) EFFECT ON OTHER LAWS.—Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

SEC. 407. REVIEW.

Not later than 5 years after the effective date of the regulations initially issued under section 403, the Commission shall—

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

SEC. 408. EFFECTIVE DATE.

Sections 403(a), 405, and 406 of this title take effect on the later of—

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 404 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

TITLE V—OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES

SEC. 501. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by Portland State University for the purpose of generating income for the support of the Institute.

(2) INSTITUTE.—The term ''Institute'' means the Oregon Institute of Public Service and Constitutional Studies established under this title.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

SEC. 502. OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES.

From the funds appropriated under section 506, the Secretary is authorized to award a grant to Portland State University at Portland, Oregon, for the establishment of an endowment fund to support the Oregon Institute of Public Service and Constitutional Studies at the Mark O. Hatfield School of Government at Portland State University.

SEC. 503. DUTIES.

In order to receive a grant under this title the Portland State University shall establish the Institute. The Institute shall have the following duties:

(1) To generate resources, improve teaching, enhance curriculum development, and further the knowledge and understanding of students of all ages about public service, the United States Government, and the Constitution of the United States of America.

(2) To increase the awareness of the importance of public service, to foster among the youth of the United States greater recognition of the role of public service in the development of the United States, and to promote public service as a career choice.

(3) To establish a Mark O. Hatfield Fellows program for students of government, public policy, public health, education, or law who have demonstrated a commitment to public service through volunteer activities, research projects, or employment.

(4) To create library and research facilities for the collection and compilation of research materials for use in carrying out programs of the Institute.

(5) To support the professional development of elected officials at all levels of government.

SEC. 504. ADMINISTRATION.

(a) LEADERSHIP COUNCIL.—

(1) IN GENERAL.—In order to receive a grant under this title Portland State University shall ensure that the Institute operates under the direction of a Leadership Council (in this title referred to as the ''Leadership Council'') that—

''(A) consists of 15 individuals appointed by the President of Portland State University; and

''(B) is established in accordance with this section.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)(A)—

(A) Portland State University, Willamette University, the Constitution Project, George Fox University, Warner Pacific University, and Oregon Health Sciences University shall each have a representative;

(B) at least 1 shall represent Mark O. Hatfield, his family, or a designee thereof;

(C) at least 1 shall have expertise in elementary and secondary school social sciences or governmental studies;

(D) at least 2 shall be representative of business or government and reside outside of Oregon;

(E) at least 1 shall be an elected official; and

(F) at least 3 shall be leaders in the private sector.

(3) EX-OFFICIO MEMBER.—The Director of the Mark O. Hatfield School of Government at Portland State University shall serve as an ex officio member of the Leadership Council.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The President of Portland State University shall designate 1 of the individuals first appointed to the Leadership Council under subsection (a) as the Chairperson of the Leadership Council. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENT.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1), or the term of the Chairperson elected under this paragraph, the members of the Leadership Council shall elect a Chairperson of the Leadership Council from among the members of the Leadership Council.

SEC. 505. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the Oregon University System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the Institute under section 503.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be spent by Portland State University in collaboration with Willamette University, George Fox University, the Constitution Project, Warner Pacific University, Oregon Health Sciences University, and other appropriate educational institutions or community-based organizations. In expending such funds, the Leadership Council shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999.

TITLE VI—PAUL SIMON PUBLIC POLICY INSTITUTE

SEC. 601. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 602(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the Paul Simon Public Policy Institute described in section 602.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(6) UNIVERSITY.—The term ''University'' means Southern Illinois University at Carbondale, Illinois.

SEC. 602. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 606, the Secretary is authorized to award a grant to Southern Illinois University for the establishment of an endowment fund to support the Paul Simon Public Policy Institute. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) DUTIES.—In order to receive a grant under this title, the University shall establish the Institute. The Institute, in addition to recognizing more than 40 years of public service to Illinois, to the Nation, and to the world, shall engage in research, analysis, debate, and policy recommendations affecting world hunger, mass media, foreign policy, education, and employment.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any

grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 603. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State of Illinois, such as federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, or obligations of the United States.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 604. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 602(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 605. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 604, except as provided in section 602(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 603; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be proscribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 606. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999. Funds appropriated under this section shall remain available until expended.

TITLE VII—HOWARD BAKER SCHOOL OF GOVERNMENT

SEC. 701. DEFINITIONS.

In this title:

(1) BOARD.—The term ''Board'' means the Board of Advisors established under section 704.

(2) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University of Tennessee in Knoxville, Tennessee, for the purpose of generating income for the support of the School.

(3) SCHOOL.—The term ''School'' means the Howard Baker School of Government established under this title.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) UNIVERSITY.—The term ''University'' means the University of Tennessee in Knoxville, Tennessee.

SEC. 702. HOWARD BAKER SCHOOL OF GOVERNMENT.

From the funds authorized to be appropriated under section 706, the Secretary is authorized to award a grant to the University for the establishment of an endowment fund to support the Howard Baker School of Government at the University of Tennessee in Knoxville, Tennessee.

SEC. 703. DUTIES.

In order to receive a grant under this title, the University shall establish the School. The School shall have the following duties:

(1) To establish a professorship to improve teaching and research related to, enhance the curriculum of, and further the knowledge and understanding of, the study of democratic institutions, including aspects of regional planning, public administration, and public policy.

(2) To establish a lecture series to increase the knowledge and awareness of the major public issues of the day in order to enhance informed citizen participation in public affairs.

(3) To establish a fellowship program for students of government, planning, public administration, or public policy who have demonstrated a commitment and an interest in pursuing a career in public affairs.

(4) To provide appropriate library materials and appropriate research and instructional equipment for use in carrying out academic and public service programs, and to enhance the existing United States Presidential and public official manuscript collections.

(5) To support the professional development of elected officials at all levels of government.

SEC. 704. ADMINISTRATION.

(a) BOARD OF ADVISORS.—

(1) IN GENERAL.—The School shall operate with the advice and guidance of a Board of Advisors consisting of 13 individuals appointed by the Vice Chancellor for Academic Affairs of the University.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)—

(A) 5 shall represent the University;

(B) 2 shall represent Howard Baker, his family, or a designee thereof;

(C) 5 shall be representative of business or government; and

(D) 1 shall be the Governor of Tennessee, or the Governor's designee.

(3) EX OFFICIO MEMBERS.—The Vice Chancellor for Academic Affairs and the Dean of the College of Arts and Sciences at the University shall serve as an ex officio member of the Board.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The Chancellor, with the concurrence of the Vice Chancellor for Academic Affairs, of the University shall designate 1 of the individuals first appointed to the Board under subsection (a) as the Chairperson of the Board. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENTS.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1) or the term of the Chairperson elected under this paragraph, the members of the Board shall elect a Chairperson of the Board from among the members of the Board.

SEC. 705. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the University of Tennessee System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the School under section 703.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be available for expenditure by the University for purposes consistent with section 703, as recommended by the Board. The Board shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 706. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $10,000,000 for fiscal year 2000.

TITLE VIII—JOHN GLENN INSTITUTE FOR PUBLIC SERVICE AND PUBLIC POLICY

SEC. 801. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 802(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the John Glenn Institute for Public Service and Public Policy described in section 802.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(6) UNIVERSITY.—The term ''University'' means the Ohio State University at Columbus, Ohio.

SEC. 802. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 806, the Secretary is authorized to award a grant to the Ohio State University for the establishment of an endowment fund to support the John Glenn Institute for Public Service and Public Policy. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) PURPOSES.—The Institute shall have the following purposes:

(1) To sponsor classes, internships, community service activities, and research projects to stimulate student participation in public service, in order to foster America's next generation of leaders.

(2) To conduct scholarly research in conjunction with public officials on significant issues facing society and to share the results of such research with decisionmakers and legislators as the decisionmakers and legislators address such issues.

(3) To offer opportunities to attend seminars on such topics as budgeting and finance, ethics, personnel management, policy evaluations, and regulatory issues that are designed to assist public officials in learning more about the political process and to expand the organizational skills and policymaking abilities of such officials.

(4) To educate the general public by sponsoring national conferences, seminars, publications, and forums on important public issues.

(5) To provide access to Senator John Glenn's extensive collection of papers, policy decisions, and memorabilia, enabling scholars at all levels to study the Senator's work.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 803. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in accordance with the University's investment policy approved by the Ohio State University Board of Trustees.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 804. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 802(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 805. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 804, except as provided in section 802(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 803; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be prescribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $6,000,000 for fiscal year 2000. Funds appropriated under this section shall remain available until expended.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, pursuant to agreement of October 7, I ask the Senate proceed to the consideration of the conference report to accompany S. 2206, the human services reauthorization bill.

I further ask that immediately following adoption of the conference report, the Senate proceed to executive session, and pursuant to the consent agreement of October 6, that the nomination of William A. Fletcher of California to be United States Circuit Judge for the Ninth Circuit, be considered.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators, there will be about 25 minutes or so on the human services reauthorization bill—without a recorded vote. It will be a voice vote. Then we will go to the Fletcher nomination.

Therefore, the next recorded vote would be at approximately 2:30.

I yield the floor.

COATS HUMAN SERVICES REAUTHORIZATION ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report to accompany S. 2206, which the clerk will report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2206), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1998.)

Mr. JEFFORDS. Mr. President, the conference report on the Coats Human Services Reauthorization Act of 1998 includes the Head Start program, the

Community Services Block Grant, and the Low Income Home Energy Assistance Program. Through this reauthorization, these programs can continue to provide vital assistance to the neediest of Americans. The Assets for Independence Act, also included in this bill, is a new way of helping low-income individuals and families to achieve economic self-sufficiency.

For three decades, Head Start, CSBG, and LIHEAP have effectively helped many low-income families and individuals throughout America. In this legislation, we have used the lessons learned over the past thirty years to reaffirm what is working well, make improvements where necessary to better meet today's challenges, and eliminate what no longer achieves our goals.

This bill leaves present law largely intact, but it does make some important changes to improve program accountability, expand services to meet the changing needs of today's families, and to increase the capacity of these programs to reach each of the program's purposes.

The reauthorization of Head Start expands the Early Head Start program for our youngest children, in a manner which balances the desire to make this program available to more children and families and the need to ensure that every Head Start program meets the high standards of quality that we have demanded.

The new evaluation and research provisions will provide much-needed information about how the program operates, help identify the ''best practices,'' and will guide the grantees, the Department of Health and Human Services, and Congress to continue the improvements in Head Start which began four years ago.

This legislation expands the Head Start competitive grant process to include for-profit service providers. All Head Start grantees must meet the same high level of performance standards and outcome measures. Tax status does not guarantee the quality of a program—-good or bad,. The most important issue is selecting the best possible provider, non-profit or for-profit, public or private, to deliver Head Start services. That is what this legislation does.

The second major program authorized under this legislation is the Community Services Block Grant, or CSBG. This program provides funding to States for work in local communities to alleviate the causes of poverty. That's an easily defined goal, but getting there takes lots of work, and diverse communities across the nation are taking equally as diverse approaches to meeting it.

Local Community Action Agencies, working with other groups and individuals in their communities, are helping people find and keep a job. They are helping them go back to school or get their GED. Provisions in this legislation will help States and local communities to continue this important work.

For almost two decades, the Low Income Home Energy Assistance Program (LIHEAP) has provided a lifeline to countless Americans who cannot pay their fuel bills. The program works very well. It is widely regarded as a model block grant program that gives states the flexibility to meet the needs of their low-income residents while ensuring an appropriate level of accountability for federal dollars.

The reauthorization of LIHEAP will help about four million low-income, disabled, and elderly households pay their fuel bills so they won't have to struggle to keep warm in the winter or to avoid heatstroke in the summer. They won't be forced to choose between heating and eating. Although some four million households received LIHEAP benefits this year, if we had the resources, some 30 million households would be eligible for LIHEAP assistance. This legislation establishes an authorization level that will permit Congress to increase funding for LIHEAP, a goal towards which I will continue to work.

I know some of our colleagues in Congress wonder whether we still need a LIHEAP program. Today I think we send a strong message that the program is more important than ever, especially in light of welfare reform efforts. Low- and fixed-income households still spend at least 18 percent of their income on energy bills, a proportion virtually unchanged since LIHEAP was created.

The Assets for Independence Act represents an important new approach to helping low-income families and individuals. Through Individual Development Accounts, the saving, investment, and accumulation of assets is encouraged as a way to increase economic self-sufficiency and build a future. Senator COATS crafted this portion of the legislation. His work in the development of asset-based policies to help low-income individuals and families has helped us approach an old problem from a new angle.

Senator COATS took the lead in shepherding this bill through the legislative process, from the first draft to the conference report. When the Committee on Labor and Human Resources marked-up the bill, they unanimously voted to change the name of the legislation to the Coats Act as a tribute to Senator COATS' dedication to issues affecting children and their families.

In both his personal and professional life, Senator COATS has been a longstanding activist on behalf of American families. He was a Big Brother in Indiana long before his political career began, and was recently elected President of the Board of Directors for Big Brothers/Big Sisters of America. Early in his congressional career, Senator COATS served as the Republican leader for the House Select Committee on Children, Youth And Families.

Upon arriving in the Senate in 1989, he became the ranking member of the Subcommittee on Children and Families of the Senate Committee on Labor and Human Resources. Serving as the subcommittee's Chairman since 1995, Senator COATS has been a voice of reason and a tireless advocate for children and families.

His compassion and caring is evident in every piece of legislation that has come out of that subcommittee since Senator COATS became a member. When he leaves the Senate, I will miss his leadership and most of all, his friendship.

The Coats Human Services Reauthorization Act will serve to remind us all of his contributions to the Labor Committee and the Senate.

This legislation is the result of months of hard work, negotiation, and compromise. It has been a truly bi-partisan, bicameral effort that has resulted in good public policy.

The legislation reinforces what works in these programs, and discards what does not, which is the whole purpose of a reauthorization.

It continues the mission that we began many years ago of empowering communities to help their most vulnerable populations, and it does this in a responsible manner. This bi-partisan effort would not have been possible without the hard work of many outstanding staff members.

With this legislation, Stephanie Monroe, the Staff Director for the Subcommittee on Children and Families, has added one more piece of effective public policy to her already impressive portfolio. Her work in researching, drafting, and negotiating this bill has been invaluable. Stephanie has been working in the Senate for fourteen years and I hope she will seriously consider continuing on here, after Senator COATS retires.

I want to thank Stephanie Robinson and Amy Lockhart, of Senator KENNEDY's staff and Suzanne Day and Jim Fenton of Senator DODD's staff for their contributions and their commitment to keeping this legislation a bipartisan effort.

Conferencing a bill always involves long hours, hard work, and much patience. I appreciate the efforts of Denzel McGuire, Mary Gardner Clagett, and Sally Lovejoy on the staff of the House Committee on Education and Workforce.

I also want to thank Jackie Cooney of Senator GREGG's staff, Alex Nock and Marcy Phillips with Representative MARTINEZ, Melanie Marola with Representative CASTLE, Amy Adair and Randy Brant with Representative SOUDER for their work on this legislation.

Brian Jones recently left my staff on the Committee on Labor and Human Resources, but before he left, he contributed enormously to the crafting of this legislation. I wish him well in his new venture, and appreciate his contributions to this and other legislation while on my staff. Geoff Brown, who is on my personal staff was instrumental in crafting and negotiating the

LIHEAP portion of the bill. Working with Cameron Taylor, Legislative Director of the Northeast-Midwest Senate Coaltion, Geoff made sure that this critical program will continue to meet the needs of millions of low-income families.

Kimberly Barnes-O'Connor provided valuable and tireless counsel throughout this process, proving once again her capacity to put the interests of children and families first. I commend her for her exemplary service to me, the committee, the Congress, and the constituents we serve through these critical human services programs.

Mark Powden, the Staff Director for the Committee on Labor and Human Resources, as always, helped to clear the obstacles and push this legislation forward. Thank you, Mark.

I yield the remainder of my time to Senator COATS, who is worthy of all the praise possible with respect to this legislation and his total service to this Nation.

The PRESIDING OFFICER. The distinguished Senator from Indiana is recognized.

Mr. COATS. Mr. President, allow me to thank my colleagues for their kind words and also for their assistance.

At a time when our two parties are often divided over issues, major issues, this is truly a bipartisan effort. This is something that could not have been achieved without the cooperation, support, help and assistance of people on both sides of the aisle. I thank the chairman and Senator KENNEDY for their work with us on this. I thank my counterpart on the Children and Families Subcommittee, Senator DODD; Senator GREGG has been a supporter of this effort, and others on the committee who have worked hard and worked diligently with us to bring us to this particular point.

Each of the four programs that are encompassed in this bill represent an all too rare occurrence—a forging of public and private partnership to combat the effects of poverty and unleashing the vast resources of one of our most important assets, the local community.

The first component of this bill is the reauthorization of Head Start, a program that has proven to be significant in providing an opportunity for children to realize their full potential. It was more than a decade ago that Congressman GEORGE MILLER and I, as chairman and ranking member, respectively, of the Children, Youth and Family Subcommittee in the House of Representatives, asked the General Accounting Office to do an analysis of all of the programs that affected children, youth and families under the title and the theme of what works, what doesn't and why. It was a 2-year exhaustive study, and it came back listing eight Federal programs that provided real tangible benefits and a real return on the investment of the taxpayer's dollar and encouraged support for those programs.

At the head of the list, No. 1 on the list was Head Start. It said that for the taxpayer's investment in providing low-income, disadvantaged children with opportunities to prepare to enter the educational system, he or she was saving an enormous amount of money that would have had to be spent on remedial education and would have been potentially lost because those children were not prepared to enter the educational system. Since that time, I have been an ardent supporter of Head Start, in trying to provide funds for Head Start and also to make sure the program is effective. It is a program that clearly has provided many millions of children opportunities that they would not have otherwise had.

However, having said that, there have been questions about the quality of the program. We have experienced varying degrees of quality, from excellent in some cases to very poor in other cases. With the 1994 reauthorization, Congress and the administration made a commitment to enhance the focus on quality improvement. Since the last reauthorization, the Head Start bureau has offered technical assistance, resources and support to Head Start programs that are committed to pursuing excellence—again, something that is all too rare. We have also terminated, actually terminated grants to those programs that were experiencing deficiencies to the extent that they could not be remedied.

Close to 100 Head Start grantees have been terminated or have relinquished their grants since 1994—the first time in history that deficient programs were actually recompeted. These are essential. Too often here we authorize a new program with glowing words and the best of direction that we can provide, only to find later that those programs did not match up to the promise, and yet they are continued, they are perpetuated, they continue to receive funding, we continue to support mediocrity or even worse.

We have, through the actions in 1994 and subsequent, infused into the Head Start Program not only the technical assistance and resources and support necessary, but also the oversight and the investigation and the determination that we are either going to make some of these programs that are deficient, better, or we are going to recompete them—and, as I said, more than 100 have been recompeted.

The reauthorization bill that we are dealing with today builds on that commitment by requiring that 60 percent of the Head Start funds in the first years go toward enhancing program quality. It is important that we expand Head Start. We obviously want to get as many children in the program as possible, but it does no good to expand the program, to enroll more children, if the existing programs are not providing the health and the benefit and the quality that the children need to give them that edge that they need. So the emphasis on quality early and expansion later, I think, is the proper emphasis.

We also take steps to make sure Head Start students obtain the goal of school readiness by requiring the establishment of educational performance standards to ensure that the children develop a minimum level of literacy awareness and understanding coupled with very specific measures to help us assess whether or not this program is actually working. Under this scenario, poor programs, poorly administered programs, will be identified, they will be offered technical assistance, and if they fail to correct the deficiencies, they will be terminated and the grant recompeted.

We have responded to the concerns of Head Start programs to be able to more fully address the emerging needs of working families for full-day, full-year services, by significantly enhancing the Collaboration Grant Program in current law by requiring active collaboration between Head Start and other early care in education programs within the State, and we have included the President's request for an expansion of early Head Start programs from the current 7.5 percent in fiscal year 1999 to 10 percent in fiscal year 2003.

Finally, in response to concerns raised about the lack of reliable research on Head Start, which can be used as a basis for determining its effectiveness, we have authorized the National Impact Study of Head Start. These studies will yield very valuable information about how this program is working and whether Head Start is, in fact, making a difference.

Mr. President, the whole emphasis here, as you can tell, is on sufficient oversight, sufficient involvement in the program, to determine how it is working and to establish and identify where it is not working, and to help make where it is not working better and, if not, if necessary, recompeting the whole process and turning it over to someone else.

There are three other components of this particular bill before us. One is the Low Income Home Energy Assistance Program. I will allow other Members, including the chairman, to address that. That is an issue they have been involved in more directly than I have.

Another is the Community Services Block Grant, an excellent example of what can happen when Washington allows local communities to design their own responses to local problems. The ''Washington knows best,'' the ''Washington has one model formula that fits all sizes,'' is pretty much a discounted and discarded theory. We are working now, and need to work, with local communities to identify local problems and allow them to help us and work with us in fashioning a local solution.

Mr. President, 90 percent of the funds provided under this act, the Community Services Block Grant, must be passed through by the State to local eligible entities, which include a variety of public and nonprofit organizations,

community action agencies, and faith-based neighborhood organizations.

We made some important improvements in this act, requiring each State to participate in a performance measurement system, again to determine effectiveness of programs and make sure they are meeting their program goals and priorities.

We have reauthorized a number of subcomponents of this—the Community Economic Development Program, the Rural Economic Development Program, National Youth Sports, the Community Food and Nutrition Program—and created a new program called the Neighborhood Innovation Projects, so that grants to private, neighborhood-based nonprofits can test or assist in the development of new approaches and developments in dealing with these community problems. These grants may be used for a variety of purposes, including gang interventions, addressing school violence, or any other purposes identified by the community as a problem resulting from poverty and consistent with the purposes of this CSBG.

Finally, let me address a program that has been near and dear to my heart, something that has been part of the Project for American Renewal that I authored some time ago. This is a 5-year demonstration program entitled ''Assets for Independence.'' It is designed to encourage low-income individuals to develop strong habits for saving money. It is an IRA for low-income people. The current IRA program really is only available to those who have assets readily available or accessible to put into this saving program. The Assets for Independence Act allows sponsoring organizations to provide participating individuals and families intensive financial counseling and assistance in developing investment plans for education, home ownership, and entrepreneurship.

I am excited about this new program. As I said, it is part of the Project for American Renewal legislation I first introduced in 1995. It is estimated that our 5-year investment of $100 million in asset building through these individual accounts will generate 7,000-plus new businesses, 70,000 new jobs, $730 million in additional earnings, 12,000 new or rehabilitated homes, 6,600 families removed from welfare rolls, and 20,000 adults obtaining high school, vocational, and college degrees.

Each of the programs we are authorizing today represents an effort to give people a hand up, not simply a handout. They are an acknowledgment that when one family suffers, we all suffer as Americans; when communities break down, we all pay a price, and therefore we all have a stake in helping people achieve the American dream.

The legislation recognizes the limits of government and the fact that many of our worst social problems will never be solved by government alone. We are beginning to recognize that there are people and institutions, families, churches, synagogues, parishes, community volunteer organizations, faith-based charities, that are able to communicate societal ideals and restore individual hope, and we need to allow those organizations to compete to provide services, and we have done so in each of the programs I have described.

Community activist Robert Woodson makes the point that every social problem, no matter how severe, is currently being defeated somewhere by some volunteer community group, faith-based organization, or others. This is now one of America's great untold stories. No alternative approach to our cultural crisis holds such promise, because these institutions have resources denied to government at every level, resources of love, spiritual vitality, and true compassion.

Mr. President, I have been proud to be associated with one organization entitled Big Brothers/Big Sisters of America. I have been with them now for 26 years as a Big Brother as a local board member, board president, now as the president of the national board. This, along with organizations like Boys Clubs, Girls Clubs, Boy Scouts, Girl Scouts, and others, provides just one example of how local volunteer organizations can provide volunteers who can provide help to children to give them the kind of mentoring and support they need in difficult years, growing up often in one-parent families or families with poverty.

There are examples of this all across the board. The Gospel Rescue Ministry's efforts across the country have reached out to drug-addicted homeless individuals and provided astounding support. Whether the problem is teen pregnancy, school dropouts, school violence, children without fathers—whatever—there are organizations that we need to tap into, support, and enhance their involvement, providing support for young people and addressing social problems in this country.

Mr. President, I see my time is expiring. I did not mean to go on as long as I have. I hope I have not used up all the time. I know Senator KENNEDY and others are on the floor to talk about this. These programs, I believe, the ones we are reauthorizing, represent the true measure of our compassion as a nation.

I want to end by giving credit to Stephanie Johnson, who has poured her heart and soul into this reauthorization. She has given more than any one person can ask, making this a reality. This would not have happened without her involvement. Good staff makes good Senators, and she is the epitome of good staff. I thank her personally and publicly for her work in making this, and many of the things that have happened within our committee, a reality.

With that, I appreciate the extra time and yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 11½ minutes.

Mr. KENNEDY. Mr. President, as the Nation is focusing on a number of matters today, I want to say what a really important achievement the Senate will accomplish in a few moments when we pass this very extensive authorization legislation, about $35 billion over the next 5 years.

The legislation has been described by our colleagues and friends, but I join in echoing the sentiments that have been expressed this morning in paying tribute to our friend and colleague from Indiana, Senator COATS, the staff who have worked with him, others on the committee, and our chairman, Senator JEFFORDS, in moving this legislation forward.

I remember back to 1994—maybe the Senator from Indiana remembers—when we were working at that time on the reauthorization of the Head Start Program. Many of us had been long-time supporters of that program. It is fair to say, at that time, that legislation, or the legislation that we are considering here, would not have been reauthorized unless it had the active involvement and leadership of the Senator from Indiana. That was a time of great crisis in the Head Start Program. I think the accolades that have been given about the Senator are well-deserved.

I thank him, in particular, for saving the program back in 1994, but also for the continued commitment that he has had, along with my colleague, Senator DODD, for these past years. As Senator COATS has pointed out, he was working as a cochair of the children's caucus in the House of Representatives. Our colleague and friend Senator DODD is cochair of the children's caucus in the Senate. Both of these Senators have probably spent more time focusing on the needs of children in our country than any others and have worked in a very important bipartisan way.

I join with those who pay tribute to the Senator from Indiana, and naming this legislation after him is really well-deserved. I welcome the opportunity to stand with those who say he has made an indispensable contribution to the needs of poor children in our society. I say that with great sincerity and appreciation, because he has made a very, very important difference, not just in shaping these programs, but basically in helping our country respond to these particular needs.

There have been times when we have had differences on various policy issues. But we are friends, and the Senate is at its best when we have differences on some matters, but we are able to work them out and, most of all, to respect the individual integrity which Members bring to these issues. The legislation before us today—and I urge our fellow Members to support it—is really the product of our best efforts. I think it will make an important difference in the lives of children.

I join with those in congratulating the Senator and in appreciating his leadership.

Mr. President, at a time when we have extraordinary prosperity, it is important that we look primarily at the needs of children, particularly the poor children. This bill invests in America's future by providing urgently needed assistance to low-income families and children.

This bill reauthorizes the Head Start program, the comprehensive early childhood development program for low-income children.

For more than thirty years, Head Start has been providing educational, nutritional, medical, and social services to help young children and their families reach their full potential. The advances made by this bill will ensure even greater success for the program in meeting the needs of today's families.

In preparing this bill, we've made significant efforts to improve program quality. That was particularly a matter that the Senator from Indiana was strongly committed to. We've established new education performance standards, to ensure that Head Start children enter school ready to learn. We've strengthened teacher qualifications, so that children will receive the very best care.

We've also worked to encourage closer cooperation by Head Start with other agencies so that full-day, full-year services will be more readily available to working families who need this kind of extended care.

More than 830,000 children currently receive the benefits of Head Start and they will continue to do so. Just as important, this bill makes it possible over the next five years to reach out more effectively to the 60% of eligible children who are not now receiving these services.

Head Start has demonstrated its success in lifting families out of poverty. With the program's support, many families obtain the boost they need to achieve economic self-sufficiency.

A letter I received from Monica Marafuga, a Head Start teacher in Massachusetts, makes this point well:

> I believe that Head start is sometimes the only hope for some families. As a teacher, I see the many families and children who need someone to guide them and point them in the right direction for a better life.

The Early Head Start program is also greatly enhanced by this bill. This program was established four years ago to provide high quality comprehensive services to very young children, from birth to age 3, and their families. There is nothing that can replace a parent and a home that is supportive and loving. But as we have seen, many of the children in our society are missing the support which can help them develop at a very critical and important time of their development.

We know that the first three years of life are a critical period in every child's development. We are mindful of the excellent studies that have been done by the Carnegie Commission about the importance of the development of a child's brain in the first months and years of life. The Early Head Start Program helps in developing those cognitive, emotional, and social skills that can help children seize future opportunities and fulfill their highest potential. This is something we want to encourage.

I welcome the fact that we are able to see an important enhancement of the Early Start Program. I'm especially pleased that this bill includes provisions to establish a new training and technical assistance fund, which will reinforce the program's commitment to provide quality services through on-going professional support for program staff.

The Early Start Program is having an important impact, and in this bill we continue a gradual expansion of the program so that more young children can be served. Currently, less than 2% of those eligible are receiving its benefit. This bill will expand the program over the next five years to cover an additional 40,000 babies and toddlers. This is a modest expansion, but one which I think, with its success, can be built on over future years.

In addition, the bill also renews our commitment to reducing poverty by reauthorizing the Community Services Block Grant. This program helps communities by providing assistance to address the specific needs of localities, marshaling other existing resources in the community, and encouraging the involvement of those directly affected.

Funds may be used for a variety of services, including employment, transportation, education, housing, nutrition, and child care.

I remember when Senator Robert Kennedy sponsored the initial Community Development Corporation more than 30 years ago, which was the precursor to the Community Services Block Grant. This program has a proven record of fostering innovative methods for eliminating the causes of poverty. The need today is as great as it has ever been. Poverty continues to be a significant problem across the nation.

We know that 37 million of our fellow citizens live in poverty. Children are particularly vulnerable, representing 40% of those living in poverty despite the fact that they make up only 25% of the overall population. These figures are particularly disturbing because studies show that children living in poverty tend to suffer disproportionately from stunted growth and lower test scores. The Community Services Block Grant can help alleviate these conditions and benefit these children.

The legislation also reauthorizes the Low-Income Home Energy Assistance Program for the next five years. The funding levels provided for this important program will ensure that LIHEAP continues to help low-income households with their home energy costs, particularly in extreme weather.

I am especially pleased that this legislation includes a provision to clarify the criteria for the President to release emergency LIHEAP funds. This assistance will enable many families hurt by hot or cold weather, ice storms, floods, earthquakes, and other natural disasters to get through the season.

In addition, it will enable the release of emergency LIHEAP funds if there is a significant increase in unemployment, home energy disconnections, or participation in a public benefit program.

There is clearly a continuing need for a strong LIHEAP program. 95% of the five million households receiving LIHEAP assistance have annual incomes below $18,000. They spend an extremely burdensome 18% of their income on energy, compared to the average middle-class family, which spends only 4%.

Without a strong LIHEAP program, families will be forced to spend less money on food and more money on their utility bills—the so-called ''heat or eat effect.'' The result is increased malnutrition among children.

Without a strong LIHEAP program, children will fall behind in school because they will be unable to study in their frigid households.

Without a strong LIHEAP program, low income elderly will be at an even greater risk of hypothermia. In fact, older Americans accounted for more than half of all hypothermia deaths in 1991.

LIHEAP is clearly a lifeline for the most vulnerable citizens in society, and I commend the House and Senate for strengthening this vital program.

This bill also establishes a new and innovative approach to helping low-income individuals achieve financial independence, and again, I commend Senator COATS for his leadership on this new program. Individual Development Accounts are designed to promote economic self-sufficiency by providing matching funds for deposits made into qualifying savings accounts. Funds can be used to purchase a first home, open a small business, or pay for college education.

This program shows great promise for improving the lives of many individuals and families in communities across the country.

Mr. President, I want to just use the last minute in sharing my commendation for the wonderful staff, Republican and Democrat, who worked very closely together. This bipartisan effort is really the most effective way to develop the best possible legislation.

I want to also recognize Stephanie Monroe, who will be leaving the Senate and has been really a stalwart. Everyone has enormous respect for her. She has worked with Senator COATS, but I think all of us have had enormous confidence in her leadership. She has done really an outstanding job. I also thank Suzanne Day and Kimberly Barnes O'Connor, and Amy Lockhart, a Congressional Fellow in my office, and

Stephanie Robinson of my staff who is an enormously gifted, talented and committed individual.

The Clinton Administration worked effectively with us in the development of this legislation, and they also deserve great credit. I want to particularly recognize Helen Taylor who is the Associate Commissioner of the Head Start Bureau at the Department of Health and Human Services. Ms. Taylor has dedicated her professional career to improving the lives of young children and has had over 30 years of distinguished service in the field of early childhood development. Her knowledge and experience proved invaluable in this process, and I thank her for her true commitment to the children of Head Start.

This bill ensures the continuation of these important programs into the 21st century. Again, I thank the chairman of our committee, Senator JEFFORDS, and Senator DODD, and Senator COATS who really have done an extraordinary job in bringing this legislation to where it is today.

Mr. JEFFORDS. I want to take just a couple seconds to join in the accolades which Senator KENNEDY has made for the various staff members, and also to recognize all the tremendous work that Senator KENNEDY himself has done not only today but throughout the years on these very valuable programs.

Mr. President, I yield the floor.

Mr. DODD. Mr. President, I am delighted to stand here and thank the chairman and the ranking member, the Senator from Massachusetts, as we are about to adopt the Coats Human Services Reauthorization Act, which includes Head Start, LIHEAP and the community services block grants.

People are going to wonder. This is the second day in a row that I find myself on the floor extolling the tremendous contribution of my colleague from Indiana.

We were involved in a piece of legislation yesterday. But I think all of us, as I said yesterday, are going to miss our friend, who is going to be here only a few more days and will move on to another chapter in his life.

But it is highly appropriate, given his tremendous work over his career in the Senate on behalf of children and families that this piece of legislation is going to be named in honor of his service to our country.

I am very pleased to join in that effort, and to commend him for his spectacular work over the years of service in the Senate.

Senator COATS and I have worked intensively with Senator JEFFORDS, Senator KENNEDY, other members of our committee, and the House committee to complete this important reauthorization. The strong bipartisan support for this bill is a clear statement of how we all view the crucial programs included in this bill. And it is also a testament to the leadership of Senator COATS on this legislation. While we have not necessarily agreed on every issue, I have always admired Senator COATS dedication to working to help working families, and in particular, to helping children. His presence on the Labor Committee will surely be missed, and I am pleased that the full committee chose to name this important bill after Senator COATS, as a show of respect and admiration for his service in the Senate.

This bill is fundamentally about expanding opportunity in America for all of our citizens. Under the umbrella of the Human Services Act, low income communities, their families and children receive more than $5 billion of assistance each year. These dollars support the basic building blocks of stronger communities—care and education for young children in Head Start, food, job and economic development through the Community Services Block grant, and home heating assistance through LIHEAP.

Head Start is the nation's leading child development program, because it focuses on the needs of the whole child. Inherently, we know that a child cannot be successful if he or she has unidentified health needs, if his or her parents are not involved in their education, and if he or she is not well-nourished or well-rested. Head Start is the embodiment of those concerns and works each day to meet children's critical needs. This year, Head Start will serve over 830,000 children and their families this year, and nearly 6,000 in my home state of Connecticut.

The bill before us today further strengthens the Head Start program: We continue the expansion of the Early Head Start program, increasing the set aside for this program to 10 percent in FY 2002. Anyone who has picked up a magazine or newspaper within the last year knows how vital the first three years of child's life are to their development. This program, which we established in 1994, extends comprehensive, high-quality services to these young children and their parents, to make sure the most is made of this window of opportunity.

We have added new provisions to encourage collaboration within states and local communities as well as within individual Head Start programs to expand the services they offer to families to full-day and full-year services, where appropriate, and to leverage other child care dollars to improve quality and better meet family needs.

We emphasize the importance of school readiness and literacy preparation in Head Start. While I think this has always been a critical part of Head Start, this bill ensures that gains will continue to be made in this area.

Mr. President, this bill puts Head Start on strong footing as we approach the 21st Century. It is a framework within which Head Start can continue to grow to meet the needs of more children and their families. What is unfortunate is that we cannot guarantee more funding for Head Start—I think it is shameful that there are waiting lists for Head Start and that only 40 percent of eligible children are served by this program. And Early Head Start, which is admittedly a new program, serves just a tiny fraction of the infants and toddlers in need of these services.

The President has set a laudable goal to reach 1 million children by 2002. But I say we need to do more. We need a plan to serve 2 million children—all those eligible and in need of services—as soon as possible.

Some argue that meeting the goal of fully funding Head Start will be too costly. Yes, it will cost a great deal to get there. But my question is how much more will it cost not to get there?

Studies show us that children in quality early childhood development programs, such as Head Start, start school more ready to learn than their non-Head Start counterparts. They are more likely to keep up with their classmates, avoid placement in special education, and graduate from high school. They are also less likely to become teenage mothers and fathers, go on welfare, or become involved in violence or the criminal justice system.

How much does it cost when we don't see these benefits?

I know this is an issue for another place and another venue. But I am hopeful as we strengthen Head Start we can also strengthen our resolve to expand this successful program to reach more children and their families.

Mr. President, the bill before us also makes important changes to the Community Services Block Grant program. CSBG makes funds available to states and local communities to assist low-income individuals and help alleviate the causes of poverty. One thousand local service providers—mainly Community Action Agencies—use these federal funds to address the root causes of poverty within their communities. CSBG dollars are particularly powerful because local communities have substantial flexibility in determining where these dollars are best spent to meet their local circumstances.

I have had the pleasure of visiting Community Action Agencies in Connecticut many times. They are exciting, vibrant places at the very center of their communities—filled with adults taking literacy and job training courses, children at Head Start centers, seniors with housing or other concerns, and youths participating in programs or volunteering their time.

To see clearly how critical the CSBG program is to the nation's low income families, one only needs to look at the statistics. The CSBG program in 1995 served more than 11.5 million people, or one in three Americans living in poverty. Three-quarters of CSBG clients have incomes that fall below the federal poverty guideline.

This bill recognizes the fundamental strength of this program and makes modest changes to encourage broader participation by neighborhood groups. In addition, it improves the accountability of local programs.

This bill also reauthorizes the vitally important Low Income Heating and Energy Assistance Program, or LIHEAP. Nearly 4.2 million low-income households received LIHEAP assistance during FY1996, more than 70,000 households in Connecticut. One quarter of those assisted by LIHEAP funds are elderly. Another 25 percent are individuals with disabilities. I cannot overvalue the importance of this assistance—it is nearly as necessary as food and water to a low-income senior citizen or family with children seeking help to stay warm in the winter—or as we saw a few months ago in the Southwest—to stay cool during the summer.

This bill makes no fundamental changes to the LIHEAP program. I am very pleased we increase the authorization of the program to $2 billion, which recognizes the great need for this help. We also put into place a system to more accurately and quickly designate natural disasters. Early disaster designation will allow for the more efficient distribution of the critically important emergency LIHEAP funds, aiding States devastated by a natural disaster.

This bill contains one new, important program—the Individual Development Accounts, based on a bill offered by Senator COATS and Senator HARKIN. Individual Development Accounts, or IDA's, are dedicated savings accounts for very low income families, similar in structure to IRA's, that can be used to pay for post-secondary education, buy a first home, or capitalize a business. This program is a welcome addition to the Human Services Act family. The Assets for Independence title will provide low-income individuals and families with new opportunities to move their families out of poverty through savings.

This is a strong bill and it is a good bill. I hope my colleagues will support this conference report, and again I want to thank Senator COATS for his committed leadership on this effort.

For all of those reasons, Mr. President, I commend the chairman of the committee and again the ranking member. Suzanne Day of my office and Jim Fenton did a tremendous job; Stephanie Monroe from Senator COATS' office, Stephanie Robinson from Senator KENNEDY's office and Kimberly Barnes O'Connor of Senator JEFFORDS' office did a tremendous job in pulling this together. We thank all of them for their efforts.

Again, I thank the Senator from Vermont for his graciousness.

Mr. ASHCROFT. Mr. President, I would like to take this opportunity to congratulate the members of the conference committee on S. 2206 for their hard work on this legislation which reauthorizes the Head Start program, the Low-Income Home Energy Assistance program, and the Community Services Block Grant (CSBG) program. I am particularly grateful to the conferees for including in this legislation language that will expand the opportunities for charitable and religious organizations to serve their communities with Community Services Block Grant funds. This language, which is based upon my Charitable Choice provision in the 1996 welfare reform law, will encourage successful charitable and faith-based organizations to expand their services to the poor while assuring them that they will not have to extinguish their religious character as a result of receiving government funds.

This provision makes clear that states may use CSBG funds to contract with charitable, religious and private organizations to run programs intended to fight poverty and alleviate its effects on people and their communities. When states do choose to partner with the private sector, the charitable choice concept ensures that religious organizations are considered on an equal basis with all other private organizations.

For years, America's charities and churches have been transforming shattered lives by addressing the deeper needs of people—by instilling hope and values which help change behavior and attitudes. By contrast, government social programs have often failed miserably in moving recipients from dependency and despair to responsibility and independence. We in Congress need to find ways to allow successful faith-based organizations to succeed where government has failed, and to unleash the cultural remedy that our society so desperately needs.

Unfortunately, in the past, many faith-based organizations have been afraid—often rightfully so—of accepting governmental funds in order to help the poor and downtrodden. They fear that participation in government programs would not only require them to alter their buildings, internal governance, and employment practices, but also make them compromise the very religious character which motivates them to reach out to people in the first place.

My charitable choice measure is intended to allay such fears and to prevent government officials from misconstruing constitutional law by banning faith-based organizations from the mix of private providers for fear of violating the Establishment Clause. Even when religious organizations are permitted to participate, government officials have often gone overboard by requiring such organizations to sterilize buildings or property of religious character and to remove any sectarian connections from their programs. This discrimination can destroy the character of many faith-based programs and diminish their effectiveness in helping people climb from despair and dependence to dignity and independence.

Charitable choice embodies existing U.S. Supreme Court case precedents in an effort to clarify to government officials and charitable organizations alike what is constitutionally permissible when involving religiously-affiliated institutions. Based upon these precedents, the legislation provides specific protections for religious organizations when they provide services with government funds. For example, the government cannot discriminate against an organization on the basis of its religious character. A participating faith-based organization also retains its religious character and its control over the definition, development, practice, and expression of its religious beliefs.

Additionally, the government cannot require a religious organization to alter its form of internal governance or remove religious art, icons, or symbols to be eligible to participate. Finally, religious organizations may consider religious beliefs and practices in their employment decisions. I have been told by numerous faith-based entities and attorneys representing them that autonomy in employment decisions is crucial in maintaining an organization's mission and character.

Charitable choice also states that funds going directly to religious organizations cannot be used for sectarian worship, instruction, or proselytization.

In recent years, Congress has begun to recognize more and more that government alone will never cure our societal ills. We must find ways to enlist America's faith-based charities and nongovernmental organizations to help fight poverty and lift the downtrodden. The legislation before us today provides us with such an opportunity.

Again, I want to express my appreciation to the conferees and their staff that worked on this legislation: Senators JEFFORDS, COATS, GREGG, KENNEDY and DODD, and Congressmen GOODLING, CASTLE, SOUDER, CLAY, and MARTINEZ. I especially want to commend Senator DAN COATS, the Chairman of the Labor Committee's Subcommittee on Children and Families, for his desire to include my charitable choice language in the Community Services Block Grant Reauthorization. Senator COATS worked very hard in the conference committee to garner bipartisan support for this provision. Thanks to his efforts, and the efforts of this Congress, we will soon expand the opportunities for charitable and faith-based organizations to make a positive impact in their neighborhoods and communities through the Community Services Block Grant program.

Mr. SESSIONS. Mr. President, I wish to express my sincere appreciation and admiration for the distinguished Senator from Indiana. The Senator from Indiana has set a standard and an example in this body of what it means to be a Senator, what it means to be a decent Christian gentleman, the likes of which I do not think have been surpassed in my experience here. I have had the honor of calling him friend. I have had the opportunity to serve or participate with him in a prayer breakfast that he leads. He sets the kind of example of good public service that all of us ought to seek to emulate. And I

am delighted that he has played an important role in this piece of legislation, as he has in so many others. And it will be, I am sure, successfully pursued.

The PRESIDING OFFICER. Under the previous order, the conference report is agreed to, and the motion to reconsider the vote is laid upon the table.

The conference report was agreed to.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider the nomination of William A. Fletcher to be a United States Circuit Judge.

NOMINATION OF WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 619, on which there will be 90 minutes of debate equally divided in the usual form.

The assistant legislative clerk read the nomination of William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the role of the Senate is to advise and consent in nominations by the President for judicial vacancies. That is understood in the Constitution. Every nominee of the President comes before the Judiciary Committee and then they come before this body for a vote. We are at this point analyzing the nomination of William Fletcher, Willie Fletcher from California, to the Ninth Circuit. I regretfully must say I have concluded that I have to oppose that nomination. And I would like to discuss the reasons why.

Most of the nominations that have come forward from the President have received favorable review by the Judiciary Committee. In fact, we cleared nine today. A number of them are on the docket today and will probably pass out today. So we are making some substantial progress.

Nearly half of the vacancies that exist now in Federal courts are because there are no nominees for those vacancies—almost half of them. But on occasion we need to stand up as a Senate and affirm certain facts about our courts and our Nation. One of the facts that we need to affirm is that courts must carry out the rule of law, that they are not there to make law. The courts are there to enforce law as written by the Congress and as written by the people through their Constitution that we adopted over 200 years ago. Also, that is, I think, where we are basically today.

With regard to this nomination, it is to the Ninth Circuit Court of Appeals in California. Without any doubt, the Ninth Circuit is considered the most liberal circuit in the United States. It is also the largest circuit. There are 11 circuit courts of appeals. And in the United States we have the U.S. district judges. These are the trial judges. The next level—the only intermediate level—is the courts of appeals. And they are one step below the U.S. Supreme Court. It is the courts of appeals that superintend, day after day, the activities of the district judges who practice under them.

There are more district judges in the circuit than there are circuit judges. And every appeal from a district judge's ruling, almost virtually every one, would go to the courts of appeals in California and Arizona and the States in the West that are part of the Ninth Circuit. Those appeals go to the Ninth Circuit, not directly to the U.S. Supreme Court. As they rule on those matters, they set certain policy within the circuit.

We have—I think Senator BIDEN made a speech on it once—we have 1 Constitution in this country, not 11. The circuit courts of appeals are required to show fidelity to the Supreme Court and to the Constitution. The Supreme Court is the ultimate definer of the Constitution. And the courts of appeals must take the rulings of the Supreme Court and interpret them and apply them directly to their judges who work under them or in their circuit and in fact set the standards of the law.

We do not have 11 different circuits setting 11 different policies—at least we should not. But it is a known fact that the Ninth Circuit for many years has been out of step. Last year, 28 cases from the Ninth Circuit made it to the U.S. Supreme Court. The Supreme Court does not hear every case. This is why the circuits are so important.

Probably 95 percent of the cases decided by the circuits never are appealed to the Supreme Court. The Supreme Court will not hear them. But they agreed to hear 28 cases from the Ninth Circuit. And of those 28 cases, they reversed 27 of them. They reversed an unprecedented number. They reversed the Ninth Circuit 27 out of the 28 times they reviewed a case from that circuit. And this is not a matter of recent phenomena.

I was a Federal prosecutor for almost 15 years, and during that time I was involved in many criminal cases. And you study the law, and you seek out cases where you can find them. Well, it was quite obvious—and Federal prosecutors all over the country used to joke about the fact that the criminal defense lawyers, whenever they could not find any law from anywhere else, they could always find a Ninth Circuit case that was favorable to the defendant. And they were constantly, even in those days, being reversed by the U.S. Supreme Court, because the U.S. Supreme Court's idea and demand is that we have one Constitution, that the law be applied uniformly.

So I just say this. The New York Times, not too many months ago, wrote an article about the Ninth Circuit and said these words: ''A majority of the U.S. Supreme Court considers the Ninth Circuit a rogue circuit, out of control. It needs to be brought back into control. They have been working on it for years but have not been able to do so.''

All of that is sort of the background that we are dealing with today.

When we get a nominee to this circuit, I believe this Senate ought to utilize its advise and consent authority, constitutional duty, to ensure that the nominees to it bring that circuit from being a rogue circuit back into the mainstream of American law, so we do not have litigants time and again having adverse rulings, that they have to go to the Supreme Court—however many thousands and hundreds of thousands of dollars—to get reversed.

This is serious business. Some say, ''They just reversed them. Big deal.'' It costs somebody a lot of money, and a lot of cases that were wrong in that circuit were never accepted by the Supreme Court and were never reversed. The Supreme Court can't hear every case that comes out of every circuit. So we are dealing with a very serious matter.

The Senator from Ohio who I suspect will comment today on the nominee, Senator DeWine, articulated it well. When we evaluate nominees, we have to ask ourselves what will be the impact of that nomination on the court and the overall situation. We want to support the President. We support the President time and again. I have seen some Presidential nominees that are good nominees. I am proud to support them. There are two here today who I know personally that I think would be good Federal judges. But I can't say that about this one.

We need to send the President of the United States a message, that those Members of this body who participate in helping select nominees cannot, in good conscience, continue to accept nominations to this circuit who are not going to make it better and bring it back into the mainstream of American law.

With regard to Mr. Fletcher, he has never practiced law. The only real experience he has had outside of being a professor, was as a law clerk. His clerkship was for Justice William Brennan of the U.S. Supreme Court. That is significant and it is an honor to be selected to be a law clerk for the Supreme Court. But the truth is, Justice Brennan has always been recognized as the point man, the leading spokesman in American juris prudence for an activist judiciary. I am not saying he is a bad man, but that is his position.

Justice Brennan used to dissent on every death penalty case, saying he adhered to the view that the death penalty was cruel and unusual punishment, and within that very Constitution he said he was interpreting, there are at least four to six references to the death penalty and capital crimes.

The Founding Fathers who wrote that Constitution never dreamed that anyone would say that a prohibition of cruel and unusual punishment would prohibit the death penalty, because the death penalty was in every State and colony in the United States at the time the Constitution was adopted. It never crossed their minds.

This is an example of judicial activism when Justice Brennan would conclude that he could reinterpret the Constitution and what the people contracted with their Government when they ratified it. It says, ''We, the people, ordain and establish this Constitution. . ..'' So they adopt it; it is reinterpreted. That is a classic definition of judicial activism.

We know Mr. Fletcher was his law clerk and has written a law review article referring to Justice Brennan as a national treasure. It is obvious he considers him an outstanding judge and a man he would tend to emulate.

Of course, judicial activism is part of his family. One of the problems, and the Presiding Officer has attempted to deal with it through legislation, and was successful. Just today, I believe, we have passed legislation dealing with nepotism, two family members serving on the same court.

The truth is, Mr. Fletcher's mother is a judge on the Ninth Circuit already. Of the judges in the United States, I am sure she would be viewed as one of the most activist—in the Ninth Circuit, it is common knowledge she is one of the most activist nominee members of that court. It doesn't mean he will be, but he is connected to Justice Brennan, and his mother is a very liberal, an activist, and will remain on the court as a senior judge and will have the opportunity to participate in a substantial number of the opinions that are rendered by the Ninth Circuit, because they have three-judge panels who assign these cases out of the judges there and they often put these judges on a panel. If she takes senior status, which I understand she has agreed to do, she would not resign from the bench but take senior status and still be able to handle a substantial caseload. That is a troubling fact to me.

To me, a judge is a very important position at any level of the courts. This is not an absolute disqualifying factor to me, but it is a very important factor to me, and that is that Mr. Fletcher lacks any private practice experience. Mr. Fletcher has never practiced law. Mr. Fletcher has never tried a lawsuit. He has been a law clerk for William Brennan and a professor at the University of California Law School. He has never been in the courtroom as a litigant. He has never had the opportunity to have that knot in your stomach when a judge is about to rule on a motion, to understand the difficulties in dealing with human nature. He has not had that experience.

Having had 15 years of full-time litigation experience in Federal court trying cases, you learn things intuitively. Supreme Court justices and appellate court justices will be better judges if they have had that experience. It is an odd thing, and not a healthy thing, normally; it takes extraordinary and exceptional circumstances, in my opinion, to conclude that someone who has been nothing but a law professor all their life is now qualified to take a lifetime appointment to review the decisions of perhaps 100 or more trial judges in their district who are working long and hard, for whom he has never had the opportunity to practice before and see what it is like. That is not a good thing in itself. That is another reason I have serious reservations about this nominee.

Certainly Mr. Fletcher has a right to speak out, but in 1994, not too many years ago, he made a speech in which he criticized the ''three strikes'' law legislation, the criminal law changes that have swept the country, calling it ''perfectly dreadful legislation.'' He has never been a prosecutor. He has never been a judge. He has never been a lawyer. Here he is saying this about this legislation, which I believe is widely supported throughout the country. In my opinion, it has helped reduce the rise in crime, because ''three strikes and you are out'' focuses on repeat, habitual offenders.

Make no mistake, somebody will say, ''You will have everybody in jail, Jeff.'' Not so; everybody is not a repeat, three-time felony offender. If you focus on the repeat offender, those are the ones committing a disproportionate percentage of crime. We have done a better job on that in the last 10 or 15 years. We have tough Federal laws dealing with repeat offenders. States have implemented ''three strike'' laws and it has helped draw down the rise in crime. As a matter of fact, crime has been dropping after going up for many years because we got tough and identified the repeat offenders and prosecuted them successfully and States have stepped up to the plate and done so.

He criticized that. That gives me a real insight into his view about criminal law, and here he will be presiding over reviewing cases of trials involving murderers and other criminals in the Ninth Circuit and he has never had any experience.

The only thing we know about him is that he considers good, tough law legislation dreadful.

(Mr. ASHCROFT assumed the Chair.)

Mr. SESSIONS. Mr. President, I want to share some thoughts with you about judicial activism. In 1982, Mr. Fletcher wrote an article entitled ''The Discretionary Constitution.'' He was a professor then. It has been interpreted by many as a blatant approval of judicial activism. He discusses institutional suits. I was attorney general of the State of Alabama and I had to deal with Federal judges who have major court orders dominating the prison system. Most States have prison systems under court order, having Federal judges ruling those, and mental health systems and school funding issues are decided by Federal judges. So he wrote about that and other issues. In that article, this is what he said, and it really troubles me:

> The only legitimate basis for a Federal judge to take over the political function in devising or choosing a remedy in an institutional suit is a demonstrated unwillingness or incapacity of the political body.

I want you to think about that. That is a revealing quote, that, well, the only way you can do it is if the institution demonstrates an unwillingness or incapacity to act. That is the rationale of the liberal activist. What they say is, well, the State of Alabama didn't provide enough gruel for the criminals, so we are going to issue an order and tell them what they have to feed them three times a day. Or we are going to have a law library for every prison, and they have to have so many square feet. Or you have to spend so much money on education; you have to change your whole way of funding education in your State. Why? Because the State would not act.

Now, we live in a democracy. In a democracy, the people rule; they decide what they want to do. I know the distinguished Senator in the Chair, Mr. ASHCROFT, shares this view. I have heard him express it. I think these are his exact words: ''When the legislature does not act, that is a decision.'' When they go into session, they decide to act on matters or not act on them, and not acting is an action, a decision not to act. The people have influence with that because they elect their representatives and, if they are not happy, they can remove them from office.

But you can't remove a Federal judge because he has a lifetime appointment. He cannot be removed, except for the most serious personal abuses of office. Normally, making bad decisions is not one of those. I will just say this. We have a circuit that is in trouble. It is considered by a majority of the Supreme Court to be a rogue circuit. We need to put nominees on this circuit and move it back into the mainstream and not continue it out on the left wing. We have a responsibility to assure that the judges we confirm are going to improve the courts, and I think we need to vote ''no'' on this nomination because I don't believe it will take us back in the direction we need to go. I think it will take us in the wrong direction.

Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I yield myself such time as I need.

Mr. President, I rise to speak on the nomination of Professor William Fletcher, nominee to the Ninth Circuit Court of Appeals. I am pleased that the U.S. Senate is finally fully considering this nominee.

Mr. Fletcher was first nominated during the 104th Congress on December

21, 1995. I do regret the fact that his nomination has languished for as long as it has, but I would like to comment on some of the obstacles that have hindered this nomination.

First, all nominees to the Ninth Circuit Court of Appeals got bound up within the difficulties we were having with deciding whether or not to divide the Ninth Circuit. Once we established a commission to look into this matter, we have been able to process nominees to that court.

Second, some had concerns—legitimate concerns—that Professor Fletcher's mother, Betty Fletcher, currently serves as a judge on the Ninth Circuit. There is a statute that appears to prevent two people, closely related by blood or marriage, from serving on the same court. Now, the Justice Department said that only applies to people less than the judiciary, but that was pure bunk as far as I was concerned. The statute is pretty clear. Yes, it is an old statute, but it is clear and it is a matter of great concern to me. To ensure compliance with that law—or to the best of my ability to make sure that this law is complied with, Judge Betty Fletcher has agreed to take senior status upon her son's confirmation, and Senator KYL has introduced legislation, which passed the Senate last night, which I support, that will clarify the applicability of the so-called antinepotism statute.

Just to say a little bit on that statute, it seems to me that it is very logical that we should not place persons of such close consanguinity on the same court that overviews 50 million people. Surely we can find people other than sons of mothers on the court. So Senator KYL has made a splendid effort to try to resolve this matter. He indicated in our Judiciary Committee this morning that, as a matter of principle, he would have to vote against Professor Fletcher because he feels that the statute does apply. I tried to resolve it by chatting with Judge Betty Fletcher who has agreed to take senior status upon her son's confirmation.

Now that these obstacles have been removed, I am pleased that we are voting on Mr. Fletcher and would like to express my considered view that he should be confirmed.

I am the first to say that I may not agree with all of Professor Fletcher's views on Federal courts and procedure, the separation of powers, or constitutional interpretation. But the question is not whether I agree with all of his views, or whether a Republican President would or would not nominate such a candidate. The President is entitled to have his nominees confirmed, provided that the nominee is well qualified and will abide by the appropriate limitations on Federal judges.

I recognize that this is especially important for nominees to the Ninth Circuit and concur wholeheartedly with those of my colleagues who believe that the Ninth Circuit has literally gone out of control. I agree with the distinguished Senator from Alabama that that circuit is out of line and out of control. It is often reversed. It has a 75 percent reversal rate over the last number of decades because of these activist judges on that bench. But Professor Fletcher has personally assured me that he would follow precedent, that he would interpret and enforce the law, not make laws from the bench.

I believe Professor Fletcher is a man of honor and integrity and that he will live up to his word and, in fact, I hope Professor Fletcher, who is an expert on civil procedure, can actually help rein in some of the more radical forces on the Ninth Circuit Court of Appeals.

Professor Fletcher clearly is highly qualified. He is a graduate of the Yale Law School, he clerked for a Supreme Court Justice, and is considered an eminent legal scholar. That consideration is justified. Although some of his writings may push the envelope of established legal thinking, as often happens in the case of professors of law, we should recognize that this is the role of academics. I made that point during the Bork nomination when my colleagues on the other side were finding fault with many of the positions that Judge Bork had taken in some of his writings, many of which he repudiated later, but all of which were provocative and intended to create debate on the respective subjects.

In short, I believe Professor Fletcher is within the mainstream of American legal thought just as several Republican nominees such as Antonin Scalia, Frank Easterbrook, Richard Posner, and Ralph Winter were when they were nominated, and this body should confirm him today.

I hope my colleagues will confirm Professor Fletcher.

Today the Judiciary Committee voted out 15 judicial nominees and 4 U.S. attorneys. This year we have held hearings for 111 out of 127 nominees.

If all of the judges who are now pending on the Senate floor are confirmed, as I expect they will be, we will end this Congress having confirmed 106 judges, resulting in a vacancy rate of 5.4 percent. This will be the lowest vacancy rate since the judiciary was expanded in 1990.

Also, over 50 percent of the judges confirmed this year, to date, by this Republican Senate have been women and/or minorities.

Given the fact that over the last five Congresses the average number of article III judges confirmed is 96, I think this Republican majority has done very well to this point, and will continue to do so. Can we do better? Always. I am sure we can. And we will certainly try to do better during this coming year, and I intend to do better during the coming year.

At this particular point, we are concerned about Professor William Fletcher, who I believe is highly qualified for this job. Even though I don't agree with him on everything that he believes, or everything that he has taught, the fact of the matter is he is qualified, he is a decent man, and he should be confirmed here today.

Although Professor Fletcher's nomination has taken quite a while to be brought up for a vote, I do not think anyone can fairly criticize the work the Judiciary Committee has done this year, especially during the last few weeks of this session. On Tuesday of this week, Senator SPECTER chaired a hearing for 11 nominees. Nine of those 11 nominees were received by the Committee only within the last month. I am told that, according to the Department of Justice, the hearing Senator SPECTER chaired broke a record for the most nominees on a single hearing.

To date, the Republican Senate has already confirmed 80 judges. And today, that number will rise to 84, if Professor Fletcher and the other judges that will be brought up for a vote are confirmed—as I wholly expect they will. As I stated earlier, if all of the nominees now pending on the Senate floor are confirmed, the Senate will adjourn having confirmed 106 Article III judges.

Again, this will leave a judicial vacancy rate of only 5.6 percent. Keep in mind that the Clinton administration is on record as having stated that a vacancy rate of just over 7 percent is considered virtual full employment of the Federal judiciary.

I do not think anyone can legitimately argue that the Judiciary Committee has not done its job well. Yes, there have been some controversial Clinton nominees that have moved slowly or not at all, but sometimes nominees come to the Committee with problems that prevent their nominations from going forth. I am pleased to say that although some thought the problems relating to Professor Fletcher's nomination could not be worked out, they ultimately have been. I fully expect that Professor Fletcher will be confirmed today and I will vote for him.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. How much time does the distinguished Senator from Washington desire? I yield 5 minutes or such time as he needs to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I share the background of the Senator from Alabama as attorney general of my State. I agree with much of the philosophic underpinning of his remarks directed at the judicial philosophy of Mr. Fletcher. I disagree, however, as to the conclusion, and intend to vote for his confirmation.

The Constitution of the United States says that the President shall nominate and by and with the advice of the Senate shall appoint judges to positions like the one we are debating here today.

In my view—I have some differences even with my good friend from Utah on

this subject—I believe that does permit a Senator to vote against a judicial nominee on the grounds that the Senator disagrees with the fundamental legal philosophy of that nominee. I also believe, however, that when the President has sought the advice as well as the consent of the Senate, and when that advice has been heated, at least to the extent of being given significant weight, it is then appropriate to vote for the confirmation of a judicial nominee, even though one, as an individual Senator, might well not have nominated that individual had he, the Senator, been President of the United States.

That is the situation in which I find myself here. I have met with and talked about Mr. Fletcher's ambitions on two or three occasions at some length. I have found him to be a thoughtful, intelligent, hard-working individual dedicated to the law as he sees it, and, perhaps even more importantly than that, as the Constitution and the statutes of the United States lay it out.

He would certainly not have been my first choice had I been the nominating authority in this case. But, I am not. I am an individual Senator. At the same time, the President of the United States and his officers have, in fact, sought my advice as well as my consent on judicial nominees, both to the district courts in the State of Washington, and to the Ninth Circuit Court of Appeals when those nominees come from the State of Washington.

While again I have not necessarily gotten my first choices for those positions, I believe that in a constitutional sense my advice has been sought and my advice has been given considerable weight by the President of the United States.

As a consequence, the combination of the punctual adherence to constitutional requirements with my own belief that Mr. Fletcher will fill the position of a judge on the Ninth Circuit honorably, and in accordance with the Constitution and laws of the United States, causes me to feel that he is a qualified nominee and that he should be confirmed by the Members of the Senate to the office to which the President has nominated him.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I yield to the distinguished Senator from California. She requires how much time?

Mrs. FEINSTEIN. I thank the distinguished manager. May I have 10 minutes?

Mr. LEAHY. I yield 10 minutes to the distinguished Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Vermont.

Mr. President, I rise to voice my strong support for the nomination of Professor William Alan Fletcher to the Ninth Circuit Court. I very much appreciate the views of the chairman of the committee, the distinguished Senator from Utah, on this, and his considered judgment that Mr. Fletcher deserves approval by this body. And I hope, indeed, that will be the case.

Mr. Fletcher has been before this body for over 3 years now. He has had two Judiciary Committee hearings. I had the pleasure of attending both and listening to him. His responses at these hearings were crisp, to the point, direct, and showed a depth and breadth of knowledge of the law that I think is among the top one percent of those nominees who came before the committee.

His credentials are impeccable. As the chairman pointed out, they include: magna cum laude graduate of Harvard; Rhodes scholar; law degree from Yale; service in the Navy; law clerk for U.S. Supreme Court Justice William Brennan; and a clerkship for District Court Judge Stanley Weigel.

Since 1977, he has been a distinguished professor at the Boalt Hall School of Law at the University of California, where he won the 1993 Distinguished Teacher Award and has come to be regarded as one of the most foremost experts on the Federal court and the Constitution.

Mr. President, since the distinguished Senator from Alabama raised some concerns about this nominee, I would like to respond to some of those concerns. We asked Mr. Fletcher to respond, and, in fact, he provided us with a response on a number of items that have been raised by Mr. Thomas Jipping, of the Judicial Selection Monitoring Project, and subsequently repeated.

The first allegation is what was called the ''discretionary Constitution.'' Mr. Jipping attributes to Professor Fletcher the conclusion:

> When judges think that the political branches are not doing what they should, judges have the discretionary power to do it for them.

And he states:

> Mr. Fletcher writes that this virtually unlimited judicial discretion is a ''legitimate substitute for political discretion'' when the political branches are ''in default.''

I would like to give you directly the statement from Mr. Fletcher.

The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a ''discretionary Constitution.'' As the article makes plain, I view judicial discretion as a problem rather than a solution. Further, I did not write that judicial discretion is legitimate when political branches are ''in default.'' Rather, I wrote that the exercise of judicial discretion in curing constitutional violations in institutional suits is ''presumptively illegitimate'' unless the political bodies that should cure those violations are in ''serious and chronic default.''

I would like to put all of this in the RECORD.

On the second point that has been raised critically, on standing, Mr. Fletcher writes:

> Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a narrower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing in Buckley v. Valeo. My position on standing would not drastically expand caseloads. Further, rather than inviting judges to legislate from the bench, I am particularly anxious that the Federal courts not perform as a ''super-legislature.''

The third point that he has been criticized for is the unconstitutionality of statutes. The critic writes:

> Mr. Fletcher believes that judges can declare unconstitutional legislation they believe was inadequately considered by Congress. He argues that a statute effectively terminating lawsuits against defense contractors by substituting the United States as the defendant was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be sufficient to strike down the statute.

Now, this is Mr. Fletcher's response:

> I believe no such thing. I argued that the presumption of constitutionality normally accorded to a statute should not be accorded to the Warner Amendment, based on the following factors: (1) The only body in Congress that considered the amendment was a subcommittee of the House Judiciary Committee, which held hearings and concluded that it was unconstitutional; (2) When the amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently described as doing the opposite of what it actually did.

And so, if I might, to clear these things up, Mr. Fletcher has submitted to us a draft response, and I ask unanimous consent to have printed in the RECORD both the allegations and the responses.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEAR SENATOR FEINSTEIN: I write to correct some mischaracterizations of my writing that have been put forward by Mr. Thomas Jipping.

The most extensive misrepresentations are contained in Mr. Jipping's May 10, 1996, op-ed piece in The Washington Times. I will take them in order.

(1) JUDICIAL DISCRETION

Mr. Jipping wrote: ''First, Mr. Fletcher believes in what he has called a ''discretionary Constitution.'' In fact, that was the title of his first law review article. When judges think the political branches are not doing what they should, judges have the discretionary power to do it for them. Mr. Fletcher writes that this virtually unlimited judicial discretion is a ''legitimate substitute for political discretion'' when the political branches are ''in default.'' Not surprisingly, judges get to determine when the political process has defaulted. Today courts are running prison systems, school districts and even mental institutions in the name of such discretion.'' The article Mr. Jipping refers to is ''The Discretionary Constitution: Institutional Remedies and Judicial Legitimacy,'' 91 Yale L.J. 635 (1982).

Brief statement: The article says quite the opposite of what Mr. Jipping wrote. I do not believe in a ''discretionary Constitution.'' As the article makes plain, *I view judicial discretion as a problem rather than a solution*. Further, I did not write that judicial discretion is legitimate when political branches are ''in default.'' Rather, I wrote that the exercise of judicial discretion in curing constitutional

violations in institutional suits is ''presumptively *illegitimate*'' unless the political bodies that should cure those violations are in ''*serious and chronic default*.'' at pp. 637, 695 (emph. added).

Extended analysis: The article analyzed institutional injunctions where there has already been a finding of unconstitutionality in the operation of a prison or mental hospital, in the apportionment of a legislature, or in the racial segregation of public schools. After there has been a finding of a constitutional violation, the question arises: Who should decide how that violation should be cured? Even where there has been a constitutional violation, I argue that the role of the federal courts should be severely circumscribed, and that judicially formulated injunctions should be regarded as presumptively illegitimate.

Constitutional violations in institutional cases can be cured in many ways. For example, in a prison case where conditions of confinement violate the Eighth Amendment, a prison administrator can do a number of different things to bring the prison into compliance with the Constitution. Or in a reapportionment case a state legislature can draw district lines in a number of different ways to bring the districts into compliance with the Fourteenth Amendment. Choices among the possible remedies inescapably involved the exercise of discretion, and should be regarded as presumptively illegitimate if made by a judge rather than a political entity. I wrote: ''Trial court remedial discretion [in institutional suits] can to some degree be controlled in the manner of its exercise; in some cases it may even be eliminated without sacrificing unduly the constitutional or other values at stake. But there comes a point where certain governmental tasks, whether undertaken by the political branches or the judiciary, simply cannot be performed effectively without a substantial mount of discretion. * * * The practical inevitability of remedial discretion in performing those tasks defines the legitimate role of the federal courts. * * * *[S]ince trial court remedial discretion in institutional suits is inevitably political in nature, it must be regarded as presumptively illegitimate.*'' at pp. 636–37 (emph. added).

In *Swann* v. *Mecklenberg Board of Education*, 402 U.S. 1, 16 (1971), Chief Justice Burger wrote for the Court that the district court has the power to fashion an institutional injunction only ''*[i]n default by the school authorities* of their obligation to proffer acceptable remedies'' (emph. added). I argued that ''default'' by the political authorities—which in the view of the Supreme Court justified a judicially fashioned injunction—should be found only as a last resort. I wrote. ''Political bodies and courts respond to different institutional imperatives. * * * As a matter of fundamental structure, even where a constitutional violation has been found, a court cannot legitimately resolve such a problem *unless the political bodies that ordinarily should do so are in such serious and chronic default that here is realistically no other choice.*'' at p. 695 (emph. added).

My argument is neither liberal not activist. Indeed, my formulation is more conservative and restrained than Chief Justice Burger's in Charlotte-Mecklenberg, where he required that school authorities simply be ''in default.'' I recommended increasing the threshold for judicial action by requiring that the political body be in ''such serious and chronic default that there is realistically no other choice.''

Throughout the article, I emphasized the danger in judicial overreaching: ''[A] federal court is not, and should not permit itself the illusion that it can be, anything more than a temporarily legitimate substitute for a political body that has failed to serve its function. '' at 969.

(2) STANDING

Mr. Jipping wrote: ''Second, the Constitution limits court jurisdiction to 'cases' and 'controversies.' One way to assure this jurisdiction is to demand that plaintiffs concretely trace their injury to the defendant's action, preventing judges from reaching out to decide issues and make law in the abstract. In a 1988 article, Mr. Fletcher argues that standing is merely a way of looking at the merits of a case rather than assuring a court's jurisdiction. As such, he believes that Congress can write statues that allow anyone or anything to sue, regardless of whether plaintiffs have suffered any harm at all. This view would drastically expand federal court caseloads and give judges innumerable opportunities to legislate from the bench.'' The article Mr. Jipping refers to is ''The Structure of Standing,'' 98 Yale L.J. 221 (1988).

Brief statement: Contrary to what Mr. Jipping wrote, I do not believe Congress can write statutes that allow anyone or anything to sue. Indeed, in some cases I take a narrower view of standing than the Supreme Court. For example, I argued that the Court should not have granted standing in *Buckley* v. *Valeo*, 424 U.S. 1 (1976). My position on standing would not drastically expand caseloads. Further, rather than inviting judges to legislate from the bench, I am particularly anxious that the federal courts not perform as a ''super-legislature.''

Extended analysis: The article sought to bring some intellectual order to an area of doctrine long criticized as incoherent. I agreed with Justice Harlan that standing as presently articulated is ''a word game played by secret rules.'' *Flast* v. *Cohen*, 392 U.S. 83, 129 (1968) (Harlan, J., dissenting) at 221. My concern was not to argue for different results in standing cases, but rather to provide a coherent intellectual structure that would support those results. As I wrote, *''[W]e mistake the nature of the problem if we condemn the results in standing cases.*'' at 223 (emph added).

In my view, Justice Douglas' opinion in *Association of Data Processing Service Org.* v. *Camp*, 397 U.S. 150 (1970), is the source of much of the analytical difficulty. I stated, ''More damage to the intellectual structure of the law of standing can be traced to Data Processing than to any other single decision.'' at 229. In essence, I argued that standing doctrine should return to what it had been at the beginning of this century, when a plaintiff in federal court has to state a cause of action, and the focus was on the particular statutory or constitutional provision invoked by plaintiff. Under this earlier approach, a plaintiff has to show that he was entitled to relief ''on the merits,'' in the sense not only that defendant violated a legal duty but also that plaintiff had a legal right to judicial enforcement of that duty.

In a few cases, I disagreed with results reached by the Supreme Court. In those few cases, I generally viewed standing more narrowly than the Court and would have denied standing. The most important such case is *Buckley* v. *Valeo*, 424 U.S. 1 (1976). I did not criticize the substance of the Court's decision, but I did criticize its grant of standing.

In *Buckley*, the Court sustained a statutory grant of standing to any person eligible to vote for President to challenge on any constitutional ground the Federal Election Campaign Act of 1971. Plaintiffs included Senator Buckley who had introduced the standing provision in the Senate. They challenged the Act under the statutory grant of standing; the District Court certified twenty-two constitutional questions to the Supreme Court; and the Court answered all of them. I wrote: ''[I]f the twenty-two certified questions answered in *Buckley* had been sent to the Court in a letter from the Senate floor, as the twenty-nine questions in *Correspondence of the Justices* were sent to the Court in a letter from Secretary of State Jefferson[, i]t is unthinkable that the Court would have answered them. Yet when Congress cast the questions in the form of a lawsuit granting standing to one of its members, the Court in *Buckley* willingly provided the answers, *performing*, in Judge Leventhal's words, *in a ''role resembling that of a super-legislature.''* The lessons of *Buckley* are sobering. Not only will the Court answer questions that have proven particularly difficult for Congress. It will also answer them in the highly abstract form traditionally thought particularly ill-suited for judicial resolution.'' at 286 (emph. added). My approach to standing could hardly be clearer: I argued that the Court should not have granted standing and should not have acted as a ''super-legislature.''

(3) UNCONSTITUTIONALITY OF STATUTES

Mr. Jipping wrote: ''Third, Mr. Fletcher believes that judges can declare unconstitutional legislation they believe was inadequately considered by Congress. He argues that a statute effectively terminating lawsuits against defense contractors by substituting the United States as the defendant was passed without hearings and based on what he believes are misrepresentations about its operation. That alone would be sufficient to strike down the statute.'' The article Mr. Jipping refers to is ''Atomic Bomb Testing and the Warner Amendment: A Violation of the Separation of Powers,'' 65 Wash. L. Rev. 285 (1990).

Brief statement: I believe no such thing. I argued that the presumption of constitutionality normally accorded to a statute should not be accorded to the Warner Amendment, based on the following factors: (1) The only body in Congress that considered the Amendment was a subcommittee of the House Judiciary Committee, which held hearings and concluded that it was unconstitutional; (2) when the Amendment was later attached as a rider to an unrelated defense appropriations bill, it was consistently described as doing the opposite of what it actually did.

Elimination of the presumption does not mean that a statute is unconstitutional. A statute is unconstitutional only if it independently violates some provision of the Constitution. I did not argue—and do not believe—that inadequate consideration by Congress ''alone would be sufficient to strike down a statute.''

Extended analysis: At the outset, I note that I wrote the article as an advocate for the American military veterans and civilian downwinders. My involvement as advocate is indicated at the beginning of the article at 285, *fn.

Between 1946 and 1963, the United States conducted a little over 300 atmospheric tests of atomic bomb, about 200 of them in Nevada. Over 200,000 soldiers and an undetermined number of civilians were exposed to significant amounts of radiation during the tests. Atmospheric tests were discontinued in 1963 after the United States signed a test ban treaty. In the 1980s, a number of suits were filed against the private contractors who had assisted the government in the tests. Seeking to short-circuit the suits, the contractors sought a statute that would protect them. Joined by the executive branch, they sought a statute that would substitute the United States as a defendant in their place, and would then permit the United States to obtain a dismissal on grounds of sovereign immunity.

In 1983, a subcommittee of the House Judiciary Committee held hearings on the proposed statute and issued a written report concluding that it would be unconstitutional. The following year, Senator Warner attached the proposed statute as a rider to a defense appropriation bill. The conference committee report said that the amendment ''would provide remedy against the United States,'' even though it was clear that the intent, and ultimate effect, would be to deprive the plaintiffs of any remedy at all. After the passage of the Amendment, the District Court substituted the United States as a defendant and dismissed the suits. *In re Consolidated United States Atmospheric Testing Litigation,* 616 F.Supp. 759 (N.D. Calif. 1985), aff'd sub nom. *Konizeski* v. *Livermore Labs,* 820 F.2d 982 (9th Cir. 1987), cert. den., 485 U.S. 905 (1988).

I argued that the Warner Amendment violated separation of powers by interfering with the judicial function in violation of *United States* v. *Klein,* 80 U.S. 128 (1872). I contended the Warner Amendment should not enjoy the normal presumption of constitutionality: ''[C]ourts ordinarily accord a strong presumption of constitutionality to any legislation that is enacted in accordance with the formally required process. *We should be very reluctant to abandon the presumption when a statute has fulfilled the formal prerequisites,* but in certain circumstances such an abandonment may be justified. . . . [In the case of the Warner Amendment] we have . . . affirmative evidence that *the one body in Congress that seriously considered the amendment found it unconstitutional.* Moreover, we know that the bill was passed thereafter only by avoiding hearings and misrepresenting the bill's character. Under such circumstances, the Warner Amendment can hardly lay claim to the traditional presumption in favor of a statute's constitutionality.'' at 320 (emph. added).

(4) SEPARATION OF POWERS

Mr. Jipping wrote: ''Finally, Mr. Fletcher rejects perhaps the most important limitation on government power established by the Constitution's framers, the separation of powers. The Supreme Court has said what the Framers said, namely, that each branch has relatively defined and exclusive areas of authority and power. In a 1987 article, Mr. Fletcher condemned these decisions as 'fundamentally misguided'. Why? The Court 'read the Constitution in a literalistic way to upset what the other two branches had decided, under the political circumstances, was the most workable arrangement.' In other words, political circumstances can trump constitutional principles.'' The article Mr. Jipping refers to is a review of Chief Justice Rehnquists's book, The Supreme Court: How It Was, How It Is, 75 Calif.L.Rev. 1891 (1987).

Brief statement: I do not reject separation of powers. Indeed, I relied on separation of powers to argue the unconstitutionality of the Warner Amendment, calling it a ''vital check against tyranny.'' 65 Wash.L.Rev. at 310. In the review I criticized two separation of powers decisions by the Supreme Court, *Immigration and Naturalization Service* v. *Chadha,* 462 U.S. 919 (1983), and *Bowsher* v. *Synar,* 478 U.S. 385 (1986), in which the Court found unconstitutional two Acts of Congress. Believing in judicial restraint, Justice White dissented because he found no clear constitutional text invalidating what Congress had done. I agreed with Justice White.

Extended analysis: In *Immigration and Naturalization Service* v. *Chadha,* the Supreme Court struck down the use of the one-house veto by Congress. In *Bowsher* v. *Synar,* the Court struck down the Gramm-Rudman-Hollings Act providing for federal deficit reduction. I wrote: ''I think both decisions fundamentally misguided, for essentially the reasons given by Justice White in his dissenting opinions. . . . Justice White pointed out that [*Chadha*] invalidated, at one stroke, almost 200 statutes on the basis of a highly debatable reading of the Constitution. Invoking Justice Jackson's emphasis on a 'workable government' in his concurrence in the *Steel Seizure Case,* Justice White reminded the Court that the 'wisdom of the Framers was to anticipate that . . . new problems of governance would require different solutions.' . . . Justice White, [dissenting in *Bowsher*], again invoked Justice Jackson's view of the Constitution as a charter for a 'workable government,' and objected to what he saw as the Court's 'distressingly formalistic view' in attaching dispositive significance to what should be regarded as a triviality.'' at 1894.

Justices White and Jackson firmly believed in a non-activist judiciary. As a matter of interpretive principle, they deferred to the judgment of the political branches unless the clear text of the Constitution commanded otherwise. I agree with them.

I thank you for the opportunity to correct these mischaracterizations.

Very truly yours,

WILLIAM A. FLETCHER.

Mrs. FEINSTEIN. Mr. President, University of California law professor Charles Alan Wright, one of the Nation's leading conservative constitutional scholars, had this to say about Dr. Fletcher:

Too many scholars approach a new issue with preconceptions of how it should come out and they force the data that their research uncovers to support the conclusion that they had formed before they did the research. I think that is reprehensible for a scholar and it is dangerous for a judge.

I am completely confident that when Fletcher finishes his service on the ninth circuit we will say not that he has been a liberal judge or a conservative judge but that he has been an excellent judge, one who has brought a brilliant mind, greater powers of analysis, and total objectivity to the cases that came before him.

I believe that the nomination of William Fletcher will add strength to the ninth circuit and I hope very much that he is confirmed.

I would like to also quote Stephen Burbank of the University of Pennsylvania Law School:

His work is both analytically acute and painstaking in its regard for history. Indeed, love of and respect for history shine through all his work, as the history itself illuminates the various corners of the law he enters.

Interestingly enough, the New Republic wrote in an editorial in 1995:

Fletcher is the most impressive scholar of Federal jurisdiction in the country. His path-breaking articles on sovereign immunity and Federal common law have transformed the debates in these fields; and his work is marked by the kind of careful historical and textual analysis that should serve as a model for liberals and conservatives alike. If confirmed, Fletcher will join his mother—

And as we know now his mother is going to take senior status —

but his judicial philosophy is more constrained than hers. We hope he is confirmed as swiftly as possible.

That was back in 1995 when he was nominated. It is now almost the end of 1998, and as this man has gone through the scrutiny of 3 years of delay, I must say I very much hope that this body will confirm him this afternoon. I believe, as another has said, that he will, in fact, be an excellent, thoughtful and commonsense judge.

I thank the Chair. I yield the floor.

Mrs. BOXER. Mr. President, I am very happy to finally have the opportunity to come to the floor today and vote on the nomination of Professor William Fletcher to the U.S. Court of Appeals in the Ninth Circuit. I urge my colleagues in the Senate to vote for Professor Fletcher, who is eminently qualified to serve on the federal appeals court. Professor Fletcher was first nominated on April 26, 1995. He had a hearing and was reported out in May of 1996, and has been patiently waiting for a debate and vote on his nomination ever since.

Some members of the Senate oppose this nomination because his mother sits on this court. However, his mother, the Honorable Betty Fletcher, has already agreed to take senior status and not sit on panels with her son if he is confirmed. So, again, I am very happy to once again exercise my duties as a U.S. Senator and cast a vote on the nomination of a federal judge.

To give a little history, the 104th Congress never acted on Professor Fletcher's nomination the first time, so he had to be renominated on January 7, 1997. He waited more than a year for a second hearing, and has continued to wait for a confirmation vote, until today. One look at his record, and I am sure my colleagues will see that Professor Fletcher is eminently qualified to sit on the federal bench, and deserves swift Senate confirmation.

In 1968, Professor William Fletcher received his undergraduate degree, magna cum laude, from Harvard College. He spent the next two years at Oxford University on a Rhodes Scholarship, receiving another B.A. in 1970. After Oxford, he spent the following two years on active duty military service in the United States Navy. He was honorably discharged as a Lieutenant in 1972. Professor Fletcher then attended Yale Law School, graduating in 1975. While at Yale, he was a member of the Yale Law Journal.

After graduating from law school, Professor Fletcher clerked for a year for U.S. District Judge Stanely A. Weigel in the Northern District of California, and another year for U.S. Supreme Court Justice William J. Brennan, Jr. He began teaching at the University of California, Berkeley, School of Law, also known as Boalt Hall, in the fall of 1977, immediately after his second clerkship. While at Boalt Hall, Professor Fletcher has been teaching a broad range of courses, including Property, Administrative Law, Conflicts, Remedies, and Constitutional Law.

Professor Fletcher is widely praised by his students and his fellow academics for his fair-minded and balanced approach to legal problems. He promises to bring the same careful fair-mindedness to the federal bench.

I believe professor Fletcher will make an exceptional addition to the federal bench. I believe his intelligence, broad experience, and professional service qualify him to sit on the federal bench with great distinction. I am sure my Senate colleagues will be equally impressed, and I urge my colleagues to vote for his confirmation.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I yield up to 10 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise this afternoon to oppose the nomination of William Fletcher to be a U.S. Circuit Court judge for the Ninth Circuit. On May 21, 1998, the Senate Judiciary Committee favorably reported out this nominee by a vote of 12 to 6.

I voted against the nominee. I would like to take a moment this afternoon to explain to my colleagues in the Senate why I voted no on that date and why I intend to vote no today. I intend to vote no today, Mr. President, and I base my opposition on the fact that Mr. Fletcher's writings and statements simply do not convince me that he will help to move the Ninth Circuit closer to the mainstream of judicial thought. And that is the criteria that I applied and will continue to apply in regard to the Ninth Circuit.

Although some Senators oppose this nominee because of their reading of the antinepotism statute and their concerns in that area, the fact that Mr. Fletcher's mother also serves on the Ninth Circuit, who, as my colleague pointed out, will take senior status, does not trouble me. As I said in the Judiciary Committee, I am not in favor of legislation that, based on family relationships, restricts the power of the President or the power of the Senate to either nominate or confirm judges.

Having said that, Mr. President, let me restate what does concern me about this nomination. All of us—all of us—should be concerned about what has been going on in the Ninth Circuit over the last few years. Based on the alarming reversal rate of the Ninth Circuit, I have said before and I will say it again for the RECORD today, I feel compelled to apply a higher standard of scrutiny for Ninth Circuit nominees than I do for nominations to any other circuit.

Mr. President, I will only support nominees to the Ninth Circuit who possess the qualifications and whose background shows that they have the ability and the inclination to move the circuit back towards the mainstream of judicial thought in this country. Before we consider future Ninth Circuit nominees, I urge my colleagues to take a close look at the evidence, evidence that shows that we have a judicial circuit today that each year continues to move away from the mainstream.

I believe the President of the United States has very broad discretion to nominate to the Federal bench whomever he chooses, and the Senate should give him due deference when he nominates someone for a Federal judgeship. However, having said that, the Senate does have a constitutional duty to offer its advice and consent on judicial nominations. Each Senator, of course, has his or her own criteria for offering this advice and consent. However, given that these nominations are lifetime appointments, all of us take our advice and consent responsibility very seriously.

We should keep in mind that the Supreme Court of our country has time to review only a small number of decisions from any circuit. That certainly is true with the Ninth Circuit as well. This means that each circuit, the Ninth Circuit in this case, in reality is the court of last resort. In the case of the Ninth Circuit, they are the court of last resort for the 45 million Americans who reside within that circuit. To preserve the integrity of the judicial system for so many people, I believe we need to take a more careful look at who we are sending to a circuit that increasingly—increasingly—chooses to disregard precedent and ultimately just plain gets it wrong so much of the time.

Consistent with our constitutional duties, the Senate has to take responsibility for correcting this disturbing reversal rate of the Ninth Circuit. I think we have an affirmative obligation to do that. And that is why I will only support those nominees to the Ninth Circuit who possess the qualifications and who have clearly demonstrated the inclination to move the circuit back towards the mainstream.

Mr. President, I will want to apply a higher standard of scrutiny to future Ninth Circuit nominees to help ensure that the 45 million people in that circuit receive justice, and justice that is consistent with the rest of the Nation, justice that is predictable and not arbitrary nor dependent on the few times the Supreme Court reviews and ultimately reverses an erroneous Ninth Circuit decision.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Vermont.

Mr. LEAHY. Mr. President, I reserve our time on this side. I know on the other side the Senator from Missouri, I assume, will speak on their time. I will withhold my statement. I am kind of stuck here anyway. I yield to the Senator from Missouri, on their time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, with the permission of the Senator from Alabama, I yield myself as much time as I might consume in opposition to the nomination.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ASHCROFT. Mr. President, the Ninth Circuit Court of Appeals is in serious need of improvement. The court is the epicenter of judicial activism in this country. The Ninth Circuit's unique blend of distortion of text, novel innovation, and disregard for precedent caused it to be reversed by the U.S. Supreme Court 27 out of 28 cases in the term before last. That is something very, very serious. When this court's cases were considered by the U.S. Supreme Court in the term before last, 27 out of 28 decisions were considered to be wrong.

If the people of this country found out that 27 out of 28 decisions of the Senate were considered to be wrong, Senators would not last very long. No tolerance would be provided for virtually any institution that was wrong that much of the time. The Ninth Circuit Court's record improved last year, but barely. According to the National Law Journal, the court was reversed in whole or in part in 14 out of 17 cases last year. Over the last 2 years, that amounts to a reversal rate of 90 percent. In the last 2 terms, 9 out of 10 times the Ninth Circuit has been wrong.

The Ninth Circuit's disastrous record before the Supreme Court has not been lost on the Justices of the Supreme Court. In a letter sent last month supporting a breakup of the Ninth Circuit, Justice Scalia cited the circuit's ''notoriously poor record on appeal.'' Justice Scalia explained, ''A disproportionate number of cases from the Ninth Circuit are regularly taken by this court for review, and a disproportionate number reversed.''

The Ninth Circuit's abysmal record cannot be dismissed or minimized because the Supreme Court is there to correct the Ninth Circuit's mistakes. In a typical year, the Ninth Circuit disposes of over 8,500 cases. In about 10 percent of those cases, over 850 cases, the losing party seeks to have a review in the Supreme Court. Although appeals from the Ninth Circuit occupy a disproportionate share of the docket, the Supreme Court grants only between 20 and 30 petitions from the Ninth Circuit in a given year. If they are reversed 90 percent of the time because they are wrong in those cases that have been accepted, I do not know what the error rate would be in the other 8,500 cases that they litigate or consider on appeal, or what would be the error rate in the 850 cases that are sent, begging the Supreme Court to review the cases. But it is very likely, in my judgment, if their error rate is 90 percent in those cases that are accepted by the Supreme Court, that there are a lot of other individuals simply denied justice because of the extremely poor quality of the Ninth Circuit Court of Appeals.

This really places upon those of us in the U.S. Senate a very serious responsibility, a responsibility of seeking to improve the quality of justice that people who live in the Ninth Circuit receive. Accordingly, of the 8,500 cases decided by the Ninth Circuit in a year, only 20 or 30, or about three-tenths of 1 percent, are reviewed by the Supreme

Court. So, if there are errors in the other cases, they are just going to remain there.

Only three-tenths of 1 percent of the cases decided by the court are reviewed by the Supreme Court. So if we say it is OK for that circuit to be full of error, it is OK for that circuit to be absent the quality and the kind of correctness that is appropriate in the law, if we predicate our approval on the basis that there can be an appeal, the truth of the matter is, the Supreme Court takes only about three-tenths of 1 percent of the cases for appeal.

The Supreme Court, moreover, selects cases for review predominantly to resolve splits among the circuits, not to correct the most egregious errors. So some of the cases the Supreme Court does not even take may be more blatant injustices than the ones that the Supreme Court does take, because the Supreme Court is trying to resolve differences between the Ninth Circuit and the Second Circuit, or the Eighth Circuit and the Ninth Circuit, or something like that. So we have a real shortfall of justice that exists as a potential whenever we have a court that is so error ridden, and its error-ridden nature is demonstrated because of the correction responsibility that has to be exercised by the U.S. Supreme Court.

The truth of the matter is, for virtually all litigants within the Ninth Circuit, the decisions of the Ninth Circuit are the final word. How would you like knowing that you were going to court and that the appellate court which would oversee your day in court was reversed 90 percent of the time when it was considered by the Supreme Court, but you only had a three-tenths of 1 percent chance of getting an injustice in your case reversed because the Supreme Court only takes three-tenths of 1 percent of the cases? I think America deserves to have more confidence in its judicial system than that.

The Ninth Circuit is an activist court in desperate need of therapy and help. After a thorough review of its record, it is my judgment that Professor Fletcher would do more harm than good in the Ninth Circuit, would move that court further outside the judicial mainstream.

There has been a great deal of discussion about the applicability of Federal antinepotism statutes to this nominee. I commend individuals for raising this issue. It is critical to the respect for law.

I have heard some people say they do not really care whether this is against the law or not. Frankly, I think we ought to care. I think a disregard for the law, especially as it relates to the appointment of judges, is a very, very serious matter. It is critical to the respect for law in a society as a whole that we in the Senate respect the laws that apply to us.

However, one of the principles of judicial restraint identified by Justice Brandeis many years ago is that a court should not decide a difficult constitutional or statutory question if there is another straightforward basis for resolving the case. Applying that principle to this nomination, I have concluded that whether or not the statute precludes confirmation of Professor Fletcher, there is ample basis in the record to suggest that Professor Fletcher would exacerbate the Ninth Circuit's activism and I plan to oppose his nomination on that basis.

A number of Professor Fletcher's writings suggest a troubling tendency toward judicial activism. For example, Professor Fletcher has written in praise of Justice Brennan's mode of constitutional interpretation. He also has criticized the Supreme Court for reading the Constitution in a literalistic way. This is troubling, to say the least. Justice Brennan, as even his admirers would admit, is the godfather of the evolving Constitution and the primary critic of the literal reading of the constitutional text.

You know, there are those who believe the Constitution can be stretched, and grows, and amends itself to mean what someone wants it to mean at the time a crisis arises. I reject that. I reject Brennan's approach. Professor Fletcher embraces it. Those who believe that the Constitution can be an evolutionary document really are those who would be able to put their stamp of meaning anywhere they want anytime they choose.

The debate over whether evolving standards of decency or the text should guide judicial decisions is at the heart—the very heart—of my concern over judicial activism. Nowhere in the country is the Constitution ''evolving'' more rapidly than in the Ninth Circuit. We cannot afford to send another activist to this court.

Although a number of Professor Fletcher's writings focus on relatively esoteric subjects, they display a disturbing tendency toward activism on the issues addressed.

He has criticized the current limitations on standing and has advocated an approach that would focus more on the legislative intent—an inherently dubious guide—and would afford standing to plaintiffs excluded by the current doctrine.

Likewise, he has written that the procedural history of an amendment's enactment can lessen the presumption of constitutionality that would otherwise attach to the enactment. Frankly, we ought to be evaluating the constitutionality on the basis of the Constitution, not the procedural history. This is particularly disturbing in light of the Ninth Circuit's apparent tendency to apply a presumption of unconstitutionality to popular initiatives and other legislation the judges dislike on policy grounds.

In an opinion piece written in the midst of Justice Thomas' confirmation process, Professor Fletcher wrote that ''the Senate must insist nominees articulate their constitutional views as a condition of their confirmation.''

Professor Fletcher's articles and answers to written questions ''articulate'' his view of the Constitution. Let's look at them. It is a view with which I disagree and which, in my judgment, will only exacerbate the problems of the Ninth Circuit.

Finally, I want to acknowledge that I realize we do not appear to have the votes to defeat this nomination. Nonetheless, I believe it is important to come to the floor and debate this nomination, rather than approve it in a midnight session.

Those of us on the Judiciary Committee have had the opportunity to reflect on the problems of the Ninth Circuit—the shortfall and the injustice for people who live in the Ninth Circuit, the likelihood that they get bad decisions and only three-tenths of 1 percent of them will ever be considered by the U.S. Supreme Court. This nominee would only make that problem worse. I urge my colleagues to oppose the nomination on that basis.

I yield the floor and reserve the remainder of the time for those opposing the nomination.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak for up to 5 minutes on the serious question of steel imports and introduce a piece of legislation.

Mr. LEAHY. Mr. President, does the Senator ask for that time outside the time of the Fletcher matter?

Mr. SPECTER. Mr. President, I do.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2580 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senate will now resume debate of the nomination of Judge Fletcher.

Mr. LEAHY. Mr. President, I ask the Chair, how much time is available to this side, the proponents of the Fletcher nomination?

The PRESIDING OFFICER (Mr. SMITH of Oregon). Twenty-three minutes 16 seconds.

Mr. LEAHY. I yield myself such time as I may need.

We heard discussion about the Ninth Circuit. There was a suggestion that it is reversed all the time.

In the year ending March 31, 1997, they decided 8,701 matters; the year ending March 31, 1996, 7,813 matters; in 1995, 7,955 matters. Well, 99.7 percent of those matters were not overturned.

I ask unanimous consent that an article by Judge Jerome Farris of the U.S. Court of Appeals for the Ninth Circuit be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NINTH CIRCUIT—MOST MALIGNED CIRCUIT IN THE COUNTRY—FACT OR FICTION?

(By Hon. Jerome Farris*)

*Footnotes at end of article.

The Honorable Jerome Farris argues that the reason the Supreme Court overturns such a high percentage of Ninth Circuit cases accepted for review is not because the Circuit is ''too liberal.'' Rather, Judge Farris emphasizes the high volume of cases heard by the Ninth Circuit and its willingness to take on controversial issues. He suggests that any objective observer would conclude that the Ninth Circuit is functioning well and that the system is working precisely as the Framers of the United States Constitution intended.

The shell game has survived over the centuries because there are always those who are not merely willing, but delighted, to be deceived. If the game is played often enough and mindlessly enough, one can come very close to fooling ''all of the people all of the time.''

The Ninth Circuit—most maligned circuit in the country—fact or fiction? It is absolutely true that the United States Supreme Court accepted twenty-nine cases from the Ninth Circuit for review in 1997 and reversed twenty-eight of those decisions, affirming only one. The prior year, the Supreme Court reviewed twelve Ninth Circuit cases and reversed ten. In 1995, the Supreme Court reviewed fourteen Ninth Circuit decisions and reversed ten. During that period, no other circuit had so many decisions reversed or so high a percentage of reversals of cases accepted for review.[1]

According to these statistics, the Supreme Court reversed ninety-six percent of the Ninth Circuit cases it reviewed in 1997, an all time high.[2]

In the year ending March 31, 1997, the Ninth Circuit decided 8701 matters. In the same period ending in 1996, the Ninth Circuit decided 7813 matters. In 1995, the Ninth Circuit decided 7955 matters. If one considers the number of Ninth Circuit decisions reversed by the Supreme Court against the total number of cases decided by the Ninth Circuit, an entirely different picture emerges. Under this analysis, the Supreme Court let stand as final 99.7 percent of the Ninth Circuit's 1996 cases. No circuit in history has decided so many cases, and no circuit in history has had so low a percentage of cases reversed.

The point is not that one statistic is right and that the other statistic is wrong, but that statistics can be deceiving and can be used to paint almost any picture one wants. Courts issue ''opinions''; they do not decide right and wrong in an absolute sense. Courts cannot determine right and wrong in an absolute sense because the law is not absolute. Deciding a legal rule is not like figuring out an immutable law of physics—a court always strives for ''the right answer,'' but because the law has a life of its own, time determines what is correct. Courts on occasion reverse themselves for just that reason.

Any Ninth Circuit judge worthy of the title would want to revisit the decisions that were taken for review to determine whether in any single instance Supreme Court precedent was ignored. One cannot expect newspaper reporters to make that kind of review. News articles report the facts and others analyze the facts. It is my view that no responsible ''expert'' would comment before making such a review. What the review would reveal is no mystery because all decisions are in the domain of the public.

In 1997, the Supreme Court unanimously reversed twenty-one cases (eight of those decisions were per curiam). In the one Ninth Circuit case that the Supreme Court affirmed (the vote was eight to one), the majority held that the opinion properly followed Supreme Court precedent.[3] In one case that the Supreme Court unanimously reversed, the Ninth Circuit followed a Tenth Circuit decision. The Eighth Circuit, however, decided the issue a different way and the Supreme Court resolved the split.[4]

In *Saratoga Fishing Co.* v. *J.M. Martinac & Co.*,[5] a six to three reversal, Justice Scalia, joined by Justice Thomas, noted in dissent that ''an impressive line of lower court decisions applying both federal and state law''[6] has, like the Ninth Circuit, precluded liability in analogous situations.[7]

In eight of the reversed Ninth Circuit cases, the Supreme Court resolved conflicts between the circuits: *Old Chief v. United States*;[8] *California Division of Labor Standards Enforcement v. Dillingham Construction*;[9] *United States v. Brockamp*;[10] *Regents of the University of California v. Doe*;[11] *Inter-Modal Rail Employees Ass'n v. Atchison, Topeka, & Santa Fe Railway*;[12] *United States v. Hyde*;[13] *Glickman v. Wileman Bros. & Elliott*;[14] *Quality King Distributors, Inc. v. L'anza Research International, Inc.*[15] Thus, in many of the cases that were reversed, the Ninth Circuit was not alone in concluding a different result than the result the Supreme Court reached. Make no mistake, however, the Supreme Court *did* critcize the Ninth Circuit in some of its reversals. In one reversal, the Supreme Court stated that the Ninth Circuit failed to follow Supreme Court precedent.[16]

Courts are bound to follow Supreme Court precedent. However, what we write are opinions. The sin is not being wrong, but being wrong when the guidance was clear and when there was a deliberate failure to follow the guidance.

Two cases illustrate the dilemma of circuit courts: *Washington v. Glucksberg*,[17] regarding physician-assisted suicide, and *Printz v. United States*,[18] regarding the Brady Handgun Violence Prevention Act.[19] The Supreme Court reversed both of these Ninth Circuit decisions.

The Brady Act was widely discussed publicly and received much political interest. At issue in *Printz v. United States* was whether the Brady Handgun Act violated Article I, §8 and the Tenth Amendment of the United States Constitution by commanding chief law enforcement officers to conduct background checks of handgun purchasers. In a two to one decision, the Ninth Circuit found no constitutional violation. The Supreme Court, by a vote of five to four, reversed. Justice Scalia delivered the opinion of the Court in which Rehnquist, O'Connor, Kennedy, and Thomas joined; O'Connor filed a concurring opinion; Thomas filed a concurring opinion; Stevens filed a dissenting opinion, in which Souter, Ginsburg, and Breyer joined; Souter filed a separate dissenting opinion; and Breyer filed a dissenting opinion, in which Stevens joined. One might reasonably conclude that the solution was less than obvious.

Physician-assisted suicide has also been soundly debated in both public and political arenas. The question for decision in *Glucksberg* was whether a Washington statue that imposes a criminal penalty on anyone who ''aids another person to attempt suicide'' denies the Fourteenth Amendment's Due Process Clause liberty interest of mentally competent, terminally ill adults to choose their time and manner of death. The Ninth Circuit, in an eight to three en banc panel decision, found a liberty interest in the right to die and then weighed the individual's compelling liberty interest against the state's interest. The Ninth Circuit found the statute unconstitutional. The Supreme Court unanimously reversed the Ninth Circuit decision with five separate concurring opinions.

Was the Ninth Circuit ''wrong'' in either of these cases? The Circuit would have been, in my opinion, if it had not resolved each of the complex issues and given them full, careful, and decisive consideration. The Supreme Court reversed these decisions, but who would say that the system is not functioning as it was intended to function? Everyone is entitled to their own views, but the conclusion, in my view, is that the system envisioned by the Framers of the Constitution continues to function properly.

The decisions of the Supreme Court become the law of the land because our system of government requires settled law. It is therefore necessary that one court make a final decision, and, right or wrong, that decision governs our society.

That the Supreme Court can be ''wrong'' is evident to any student of American law, history, politics, or society. This county's jurisprudential history is filled with famous cases, affecting our entire society, in which the Supreme Court decided that it had previously reached an erroneous result: *Brown v. Board of Education of Topeka*;[20] *Bunting v. Oregon*;[21] *Garcia v. San Antonio Metropolitan Transit Authority*;[22] and twice reversing itself on death penalty cases in the 1970s, to name a few.

The Supreme Court also reverses itself in many less well-known cases. This term it reversed a decision regarding public school teachers in parochial schools.[23] The term before that it reversed itself in *Seminole Tribe of Florida v. Florida*,[24] and the year before that in *Hubbard v. United States*.[25] Justice Brandeis's dissent in the 1932 case, *Burnet v. Coronado Oil & Gas Co.*,[26] argued that the Supreme Court should overrule an earlier decision[27] and cites thirty-five cases in which the Supreme Court overruled or qualified its earlier decisions.

This list of Supreme Court reversals—in no way meant to be comprehensive—actually constitutes a high reversal rate considering that the Supreme Court currently averages about eighty to ninety decisions a year, or one percent of the number of cases that the Ninth Circuit hears. This comparison suggests that the Supreme Court would have to reverse one hundred Ninth Circuit cases a year in order to reverse the Ninth Circuit at as high a rate as the Supreme Court reverses itself (which it does about once a year).

In other instances, Congress has decided that the Supreme Court had the wrong answer and enacted legislation to effectively overrule the decision, such as the Religious Freedom Restoration Act of 1993 (RFRA)[28] and the 1982 Voting Rights Act Amendments.[29] The Supreme Court upheld the constitutionality of the 1982 Voting Rights Act Amendments[30] and it found RFRA unconstitutional.[31]

Do these results prove that Congress was right and that the Supreme Court was wrong? Or do these results prove that the Supreme Court was right and that Congress was wrong? Of course not. Rather, the results provide examples of the checks and balances designed in the Constitution to make our government run properly. Similarly, when the Supreme Court reverses an appellate court decision, it does not mean that the decision was wrong in an absolute sense, and more importantly, it does not mean that the appellate court was not functioning properly in its role in the judiciary and in the United States government.

Part of the cause of the misperception about right and wrong is created in the training of lawyers at law school. Most law schools begin teaching law in a formalistic manner: the student learns the law, and there is only one correct law. This formalism gets carried on as law students enter the legal profession. Lawyers often argue before

me that there is only one possible result (''The law dictates this result!''). This is rarely true, and is never true in complicated cases. There are always some arguments for each side, otherwise the case would be frivolous. The bottom line is that reasonable minds can differ and can each still be reasonable.

The Ninth Circuit deals with more cases than any other circuit. It is not surprising, then, that the Ninth Circuit would deal with more complicated and important issues than any other circuit. Both of these factors contribute to the Supreme Court's review and reversal of more Ninth Circuit cases than cases from other circuits.

Some observers contend that the Ninth Circuit is reversed so often because it is the most liberal circuit in the country and because the Supreme Court is currently conservative. This hypothesis also provides ammunition to those now arguing that the Ninth Circuit should be split (a topic for another article).[32] However, these observers have failed to review the facts. Of the opinions signed by Ninth Circuit judges that were reversed this year by the Supreme Court, eleven were authored by Democratic presidential appointees, and nine were authored by Republican presidential appointees. Apparently the Supreme Court is an equal opportunity reverser.

To function properly, each court must do its duty to the best of its ability. Parties must be able to rely on the full resolution of cutting edge issues in each court to which the issues are submitted. There is always the risk of reversal, but that risk should not—cannot—drive the system. The Supreme Court was better able to treat the question of physician-assisted suicide and the issue of the Brady Act because it had decisive opinions to review. One could assume that these issues are closed, and they certainly may be for the immediate future. History reminds us, though, that serious controversial issues are revisited from time to time. This comment is written by a circuit judge whose life would certainly have been different had the *Dred Scott*[33] decision not been revisited.

I make no prediction for the future of any of the Ninth Circuit reversals, but one commentator was not so cautious. Writing while *Glucksberg*[34] was pending before the Supreme Court, Roger S. Magnusson[35] in the *Pacific Rim Law and Policy Journal*, predicted:

Although an adverse Supreme Court opinion could potentially retard the process of pro-euthanasia law reform, this would be a temporary delay only which could not survive generational change. In the United States and beyond, the development of a legal right to die with medical assistance, appears inevitable.[36]

What is important to remember is that opinions, unlike arithmetic solutions, may vary. Our system under the Constitution is designed to put an end to variations because the Supreme Court makes the final decision. The danger is not that an appellate court gets reversed, but that a court might let possible reversal deter decisive, full, and reasoned consideration of important issues. An even greater danger is that the high regard in which all courts must be held if our system is to be a rule of law, not of judges, is threatened if those who are personally ambitious can dismiss a reasoned decision of any court with the throwaway phrase—''Oh well, that decision is just the irresponsible act of a coterie of liberal judges.'' All tyrants first seek to malign the rule of law.

FOOTNOTES

*Judge, United States Court of Appeals for the Ninth Circuit.

[1] The Supreme Court decided a total of ninety-one cases in the 1996 term, reversing sixty-five, affirming twenty-three, and otherwise disposing of three. *See* Thomas C. Goldstein, *Statistics for the Supreme Court's October Term 1996*, 66 U.S.L.W. 3068 (U.S. July 15, 1997).

[2] All other circuits outside of the Ninth Circuit suffered a combined reversal rate of sixty-one percent. *See* Bill Kusliak, *Reversal Rate Keeps Getting Uglier*, San Francisco Recorder, July 2, 1997, at 1.

[3] *See* Babbitt v. Youpee, 117 S. Ct. 727, 732 (1997). In *Babbitt*, the Supreme Court affirmed the Ninth Circuit's holding that a provision of the Indian Land Consolidation Act worked an unconstitutional taking by requiring escheat to the tribe of certain fractional interests in allotment upon the owner's death. *See id.*

[4] *See* California Div. of Labor Standards Enforcement v. Dillingham Constr., 117 S. Ct. 832 (1997). The Ninth Circuit held that a California prevailing wage law governing wages of apprentices was preempted by ERISA. *See* Dillingham Constr. v. County of Sonoma, 57 F.3d 712, 722 (9th Cir. 1995). In reversing, the Supreme Court found that the law at issue neither referred to nor was connected with ERISA. *See Dillingham Constr.*, 117 S. Ct. at 834. Thus, the Court held that the law did not ''relate to'' an ERISA plan for purposes of preemption. *See id.*

[5] 117 S. Ct. 1783 (1997).

[6] *Saratoga Fishing*, 117 S. Ct. at 1791.

[7] The Ninth Circuit decision employed the *East River* doctrine, *see* East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 870 (1986), to preclude liability for property damage sustained on a vessel. *See* Saratoga Fishing Co. v. Marco Seattle, Inc., 69 F.3d 1432, 1446 (9th Cir. 1995). The Ninth Circuit found that equipment added to a vessel after purchase was part of the ''product itself.'' *See id.* In reversing, the Supreme Court concluded that the after-acquired equipment constituted ''other property,'' and was not a part of the ''product itself.'' *See Saratoga Fishing*, 117 S. Ct. at 1784.

[8] 117 S. Ct. 644 (1997). In *United States* v. *Old Chief*, the Ninth Circuit found that, despite a defendant's offer to stipulate, the government was entitled to present evidence of a prior felony to prove the current charge of felon in possession of a firearm. *See* No. 94–30277, 1995 WL 325745 (9th Cir. Apr. 14, 1995) (basing the decision on 18 U.S.C. §922(g)(1)). The Supreme Court disagreed, finding that the rejection of a defendant's offer to stipulate to a felony conviction constituted an abuse of discretion where the name or nature of the underlying conviction raised the risk of tainting the jury's verdict. *See Old Chief*, 117 S. Ct. at 645.

[9] 117 S. Ct. 832 (1997). *See supra* note 4 and accompanying text.

[10] 117 S. Ct. 849 (1997). In *Brockamp*, the Supreme Court reversed the Ninth Circuit holding which allowed equitable tolling of the statutory limitations period for tax refund claims. The Supreme Court concluded that the strong language of the statute precluded the Ninth Circuit's application of the presumption favoring equitable tolling. *See id.* at 851.

[11] 117 S. Ct. 900 (1997). In *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771, 776 (9th Cir. 1995), the Ninth Circuit held that the University of California's right to indemnification from the federal government divested the university of Eleventh Amendment immunity. The Supreme Court reversed, holding that a state entity's potential legal liability, rather than financial responsibility for judgments, triggered the application of the Eleventh Amendment. *See Regents of the Univ. of Cal.*, 117 S. Ct. at 904.

[12] 117 S. Ct. 1513 (1997). In this action, the Supreme Court held that an ERISA provision prohibiting interference with protected rights applied to welfare plans. *See id.* at 1515. The Ninth Circuit found that the provision applied only to interference with the attainment of rights capable of vesting. *See* Inter-Modal Rail Employees Ass'n v. Atchison, Topeka, & Santa Fe Ry. Co., 80 F 3d 348, 351 (9th Cir. 1996).

[13] 117 S. Ct. 1630 (1997). In *Hyde*, a criminal defendant attempted to withdraw his guilty plea after the plea was accepted, but prior to acceptance of the plea agreement. The Ninth Circuit reversed the district court's refusal to allow withdrawal without a showing by defendant of a ''fair and just reason.'' *See* Hyde v. United States, 92 F.3d 779, 781 (9th Cir. 1996). The Supreme Court held that a showing of ''fair and just reason'' by defendant was necessary. *See Hyde*, 117 S. Ct. at 1631.

[14] 117 S. Ct. 2130 (1997). In *Clickman*, the Court reversed the Ninth Circuit determination that mandatory assessments on growers, handlers, and processors of California tree fruits to pay for generic advertising violated the First Amendment. *See id.* at 2142. The Supreme Court rejected the use of a heightened First Amendment scrutiny and the Ninth Circuit's finding that the law compelled financial support of others' speech, SEE ID. at 2138-39.

[15] 117 S. Ct. 2406 (1997) (mem.).

[16] *See* Suitum v. Tahoe Reg'l Planning Agency, 117 S. Ct. 1659, 1665 (1997).

[17] 117 S. Ct. 2258 (1997).

[18] 117 S. Ct. 2365 (1997).

[19] 18 U.S.C. §922 (1994).

[20] 347 U.S. 483 (19954) (overruling Plessy v. Ferguson, 163 U.S. 537 (1896)).

[21] 243 U.S. 426 (1917) (overruling Lochner v. New York, 198 U.S. 45 (1995)).

[22] 469 U.S. (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)).

[23] *See* Agostini v. Felton, 117 S. Ct. 1997 (1997) (overruling Aguilar v. Felton, 473 U.S. 402 (1985), and School Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985) (overruled as to the portion addressing the ''Shared Time'' Program).

[24] 4116 S. Ct. 114 (1996) (overruling Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989)).

[25] 514 U.S. 695 (1995) (overruling United States v. Branblett, 348 U.S. 503 (1995)).

[26] 285 U.S.C. 393 (1932), *overruled by* Helving v. Mountain Producers Corp., 303 U.S. 376 (1938).

[27] *See* Gillespie v. Okla, 257 U.S. 501 (1922) *overruled by Helvering, 303 U.S. at 376.*

[28] 42 U.S.C. §2000bb (1994).

[29] 42 U.S.C. §1973b (1994).

[30] *See* Reno v. Bossier Parish School Bd. 117 S. Ct. 1491 (1997).

[31] *See* Boerne v. Flores, 117 S. Ct. (1997).

[32] This argument, like most of the arguments for splitting the circuit, has never made sense to me. Accepting *arguendo*, the hypothesis that the Ninth Circuit is reversed often because it is to ''too'' liberal or ''too'' often wrong, a split will still leave at least one, and perhaps two, circuits that are too liberal or too often wrong.

[33] Dred Scott v. Sandford, 60 U.S. 393 (1856) (superseded by the adoption of the 13th and 14th Amendments of the U.S. Constitution after the Civil War).

[34] 117 S. Ct. 2258 (1997).

[35] Lecturer, University of Sydney School of Law; B.A. LL. B. (Hons) (A.N.U.) (1988), Ph.D. (Melb), (1994).

[36] Roger S. Magnusson, *The Sanctity of Life and the Right to Die: Social and Jurisprudential Aspects of the Euthanasia Debate in Australia and the United States*, 6 Pac. RIM & POL'Y J. 1, 5 (1997).

Mr. LEAHY. Mr. President, it has been suggested that if a court is overturned by the Supreme Court, that people ought to start asking whether those judges should be thrown out. And one Senator said, ''Suppose we were overturned like that, how long would we last here in the Senate?'' Well, it seems to me that the U.S. Senate voted very strongly—84 Senators voted for the so-called Communications Decency Act even though it was obviously unconstitutional. That went to the Supreme Court and was overturned.

A majority of the U.S. Senators voted for the line-item veto—again, blatantly unconstitutional but popular back home. That was overturned by the U.S. Supreme Court.

Eighty-five percent of the people, according to a poll, said they wanted some form of the Brady bill. This Senate voted for that overwhelmingly, knowing that it was probably unconstitutional. That was overturned by the Supreme Court.

I can think, since I have been here, of a number of times when this body went pell-mell forward on a number of bills because it was so popular to vote for them. Many times I found myself as a lone dissenter on matters that went to the U.S. Supreme Court and were then overturned as unconstitutional.

The same Senators who criticize judges who from time to time have an opinion reversed by a higher court ought to be careful with respect to what they advocate. If that standard were applied to Senators should all Senators who voted for a bill that gets

overturned as unconstitutional have to resign? Maybe not the first time they vote for something declared unconstitutional; maybe they shouldn't have to leave the first time, because everybody is allowed a mistake. If they did it a second time, do they have to go then? I come from a tolerant State. I belong to a religion that believes in redemption and forgiveness. So we will let them get away with two.

We are in the baseball season. Suppose they voted for three unconstitutional bills because they were popular but they get overturned as unconstitutional. Well, we are now considering perspectives beyond religion and politics, we are going to baseball. Three times, three strikes—are you out? Let's be a little careful when we use some of these analogies about who should or should not serve on a court depending on how many times they get reversed.

Senators may not want to go back and ask how many times they voted for something, how many times they gave wonderful speeches in favor of something, how many times they sent out press releases, sent feeds back to their TV station, maybe used them in their reelection ads, and then, guess what? The U.S. Supreme Court overturned that legislation as unconstitutional.

Especially, I say to some of my friends on the other side, when the majority of those voting to declare those laws unconstitutional were Republican members of the U.S. Supreme Court, reported by Republican Presidents, and extolled as great conservatives. In each one of the cases I have referenced, I agreed with them. They were the true conservatives. What they wanted to conserve was the Constitution of the United States.

Sometimes when we want to stand up here and tell how conservative we are, we ought to say: Are we conservative with regard to the Constitution of the United States? Are we prepared to conserve the U.S. Constitution?

I recall one day on a court-stripping bill on this floor years ago an effort was made to pass a court-stripping bill, a bill to withdraw jurisdiction from the courts over certain matters of constitutional remedies, because the polls showed how popular it would be. One Friday afternoon, three Senators stood on this floor and talked that bill into the ground.

I was proud to be one of those three Senators. As I walked out with the other two—one, the Senator from Connecticut, then an independent, Senator Lowell Weicker; the third Senator who had joined with us to talk down that court-stripping bill, my good friend, now deceased, Senator Barry Goldwater of Arizona. Senator Goldwater put his arms around the shoulders of both of us, and we were both a little bit taller than he, and said, ''I think we are the only three conservatives in the place.''

I can't speak for Senator Weicker, how he might have felt about that; I took it as a heck of a compliment—not because I go back and claim to be a conservative in my politics back home. I only claim to be a Vermonter, doing the best I can for my State. When I stand up for the U.S. Constitution, as I have so many times for the first amendment, I do it because I try to conserve what is best in our country.

Professor William Fletcher is a fine nominee. He is a decent man. He was first nominated to the U.S. Court of Appeals for the Ninth Circuit, May 7, 1995, over 3 years ago. I don't know of any judicial nominee who has had to endure the delay and show the patience of this nominee. He was nominated May 7, 1995. We are only a few months away from 1999.

I have spoken on many occasions about how the Republican Senate is rewriting the record books in terms of delaying action on judicial nominees, but Professor Fletcher's 41 months exceeds the 33-month delay in the consideration of the nomination of Judge Richard Paez and Anabelle Rodriguez; or the 26 months it took to confirm Ann Aiken; or the 24 months it took to confirm Margaret McKeown; or the 21-month delay before confirmation of Margaret Morrow and Hilda Tagle who found, unfortunately, in this Senate, that if you are either a woman or a minority, you seem to take a lot longer to get through the Senate confirmation process.

In the annual report on the judiciary, the Chief Justice of the Supreme Court observed:

> Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994.

He went on to note:

> The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

Mr. President, 3½ years is a long time to examine a nomination and to leave a judgeship vacant. Even at the pace of the U.S. Senate, 3½ years is long enough for us to make up our mind.

Around Mother's Day in 1996, the Judiciary Committee did report the nomination of Professor Fletcher to the Senate, but that year the majority, Republican majority, decided not to vote on any nominees to courts of appeals, so the nomination was not considered by the Senate. The committee vote, though, in 1996 was more than 2–1 in favor, including Senator HATCH, Senator SPECTER, Senator DEWINE, and Senator SIMPSON. This year, the vote was delayed until past Mother's Day. The vote was taken May 21, 1998. The committee's second consideration of the nominee resulted in a vote of 2–1.

I know some do not like Judge Betty Binn Fletcher. They do not agree with her decisions. In our Federal judicial system, there are mechanisms for holding judges accountable. There are panels of judges at the courts of appeals. There are en banc considerations. There is ultimately the controlling authority of the U.S. Supreme Court. Judge Fletcher's decisions are subject to review and reversal, just like every other judge.

No one should turn their anger with Judge Betty Fletcher into a reason to delay or oppose the appointment of Professor William A. Fletcher. No one should try to get back at Judge Betty B. Fletcher through delay of the confirmation of her son.

Senate Republicans have continued their attacks against an independent Federal judiciary and delayed in filling longstanding vacancies with qualified persons being nominated by the President. Professor Fletcher's nomination has been a casualty of their efforts. Forty-one months—41 months—and two confirmation hearings have been enough time for examination to bring the Fletcher nomination to a vote. Professor Fletcher is a fine person and an outstanding nominee who has had to endure years of delay and demagoguery as some chose to play politics with our independent judiciary.

Professor Fletcher has the support of both Senators from California. The ABA gave him the highest rating. He is supported by many judges and lawyers and scholars from around the State, the Ninth Circuit, and the country. I commend the distinguished chairman of the Senate Judiciary Committee, the senior Senator from Utah, Senator HATCH, and many other Republican Senators who have continued to support this fair-minded nominee.

I look forward to Senate action this afternoon and I look forward to the fact that he will be confirmed.

Mr. President, I withhold the remainder of my time.

I yield the floor.

Mr. THURMOND. Mr. President, I rise today in opposition to the nomination of William Fletcher for the Ninth Circuit Court of Appeals.

When this nomination was first considered in the Judiciary Committee in 1996, I opposed it because I believed that the anti-nepotism statute, 28 U.S.C. 458, prohibited him from serving on the Ninth Circuit based on the fact that his mother, Betty Fletcher, is a judge on the same court. There has been some dispute about whether this statute applies to judges rather than only inferior court employees, and the Senate yesterday passed legislation by Senator Kyl to clarify that the statute does apply to judges. However, the revision is prospective in nature and does not apply to Professor Fletcher. In my view, Professor Fletcher's nomination violates the statute as it existed before the Senate's clarification. Thus, I must oppose this nomination because I believe it violates the anti-nepotism laws.

Moreover, I have serious reservations about Professor Fletcher's judicial philosophy. I believe we have a duty to oppose nominees who do not have a proper respect for the limited role of a judge in our system of government.

One of the strongest and most influential advocates for an activist Federal judiciary in this century was Supreme Court Justice William Brennan. He believed that the Constitution was a living document and that judges should interpret the Constitution as though its words change and adapt over time. I have always believed that this view of the Constitution is not only wrong but dangerous to our system of government. The words of the Constitution do not change. They have an established meaning that should not change based on the views of a judge. They should change only through an amendment to the Constitution. It is through the amendment process that the people can determine for themselves what the Constitution says, rather than unaccountable, unelected judges making the decisions for them.

Professor Fletcher has written in strong support of Justice Brennan and his activist judicial philosophy. In a 1991 law review article, he praised Justice Brennan for his, quote, ''sense that the Constitution has meaning beyond the bare words of the text.'' He stated that some parts of the Constitution are, quote, ''almost constitutional truths in search of a text.'' He even approvingly quoted Justice Brennan's famous statement regarding Constitutional interpretation that, quote, ''the ultimate question must be what do the words of the text mean in our time.''

I firmly believe that the role of the judge is to interpret the law as the legislature intended, not to interpret the law consistent with the judge's public policy objectives. A judge does not make the law and is not a public policy maker. Professor Fletcher has been critical of the modern Supreme Court for its lack of political and governmental experience. In a 1987 law review article, he criticized recent landmark Supreme Court decisions on the separation of powers, saying the Court, quote, ''read the Constitution in a literalistic way to upset what the other two branches had decided, under the political circumstances, was the most workable arrangement.'' What is convenient in a political sense is irrelevant to a proper interpretation of the Constitution.

Moreover, Professor Fletcher has been nominated to the Ninth Circuit, and the Supreme Court routinely finds it necessary to reverse the Ninth Circuit. Indeed, in recent years, the Ninth Circuit has been reversed far more often than any other circuit. This trend will be corrected only if we confirm sound, mainstream judges to this critical circuit. I do not see that problem abating with nominees such as the one here, who even characterizes himself as being in his words, quote, ''fairly close to the mainstream.''

If Professor Fletcher is confirmed, I sincerely hope that he turns out to be a sound, mainstream judge and not a judicial activist from the left. I hope he helps to improve the dismal reversal rate of the Ninth Circuit.

However, we must evaluate judges based on the record we have before us. As I read Professor Fletcher's record, it does not convince me that he is an appropriate addition to the Court of Appeals. Therefore, because of my interpretation of the anti-nepotism statute and my concerns about judicial activism, I cannot support this nominee.

Mr. BAUCUS. Mr. President, I rise today to express my strong support for the nomination of William A. Fletcher to the U.S. Court of Appeals for the Ninth Circuit. Mr. Fletcher has proven himself superbly qualified for this position. A man of deep personal integrity, of sound judgement and a well respected legal scholar, Mr. Fletcher's nomination is certainly deserved and given that five judgeships remain vacant on the Ninth Circuit, his confirmation is well past due.

Mr. Fletcher's qualifications for this position are truly remarkable, Mr. President. He is a graduate of Harvard University and a Rhodes Scholar. William Fletcher earned his law degree from Yale, clerked at the United States Supreme Court, and has dedicated himself to a career of exploring legal theories as a professor and as an esteemed author.

Fletcher has been a professor at Boalt Hall since 1977 where he was awarded the Distinguished Teaching Award in 1993, an honor bestowed annually upon the five finest faculty members on the Berkley campus. Fletcher has also served as a visiting professor at the University of Michigan, Stanford Law School, Hastings College of Law, and the University of Cologne, and he has served as an instructor at the Salzburg Seminars.

Professor Fletcher's scholarly works include influential law review articles that have been immensely useful to both academics and practitioners. His works include published articles relating to the topics of civil procedure and federal courts, such as standing and the Eleventh Amendment, sovereign immunity and federal common law. In exploring the law and authoring these esteemed articles, Fletcher demonstrates his uncanny powers of analysis and steadfast objectivity.

In addition to my support Mr. President, William Fletcher's nomination enjoys broad support across political and ideological spectrums. He has been endorsed not only by an extensive array of his peers throughout the country, but also by a number of non-partisan observers and the American Bar Association, all of whom comment on the centrist, pragmatic approach he brings to the law. I am completely confident that Mr. Fletcher is the best possible candidate to the U.S. Court of Appeals for the Ninth Circuit.

So again Mr. President I would like to express my unequivocal support for William A. Fletcher as a highly qualified nominee to the U.S. Court of Appeals for the Ninth Circuit. I will conclude by quoting one of Mr. Fletcher's colleagues in saying ''If Willy Fletcher presents a problem [for the Judiciary Committee], there is no academic in America who should get a court appointment.''

Mr. SESSIONS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Alabama has 6 minutes 40 seconds.

Mr. SESSIONS. Mr. President, there have been several speakers, including the Senator from Ohio and the Senator from Missouri, who have talked about the unique circumstances that are at foot here in dealing with the Ninth Circuit, and that we have a responsibility and a duty to make sure that we use our advise and consent authority wisely to improve the courts in America, and the Ninth Circuit is in need of, severe need of reform. It has been reversed in nearly 90 percent of its cases in the last 2 years—an unprecedented record that no circuit, to my knowledge, has even been suggested to have approached. The New York Times has referred to the Ninth Circuit Court of Appeals—which includes California and most of the west coast—and they said that a majority of the Supreme Court considers the Ninth Circuit a rogue circuit.

Now, some Senators suggest this is politics. Mr. President, I was elected by the people of my State to come here, and one of my duties is to evaluate Federal judges. I have affirmed and voted for the overwhelming majority of the Clinton nominees. I am willing to vote on this one. I have agreed to this nomination to come up and be voted on. But I want to have my say. I am concerned about this. I don't think that is politics.

As a matter of fact, let me quote to you from an article that Mr. Fletcher, the nominee, wrote a few years ago referring to the confirmation process involving Justice Clarence Thomas. What he said about the role of the Senate was this:

> Does the Senate have the political will—

That is us, me—

> to come down here and do the unpleasant duty of standing up and—

And talk about a gentleman who is charming, I am sure, and a nice fellow—

> talking about the unpleasant fact that he may not be the right nominee for the court?

He said:

> Does the Senate have the political will to insist that its constitutional advise and consent role become a working reality?

Mr. President, I have been here 2 years. One nominee withdrew before a vote, and we hadn't voted on any nominees. So we are not abusing our advise and consent power. As a matter of fact, I don't think we have been aggressive enough in utilizing it to ensure that the nominees to the Federal bench are mainstream nominees.

That is what we are talking about. He said, ''The Senate must be prepared to persuade. . . .'' This is Mr. Fletcher, who wrote this article. He is an academic, a professor, so he can sit around and find time to write these articles. We are not dealing with a proven practitioner, a person who served as a State or Federal judge, as we normally have. We are dealing with a nominee who has never practiced law in his life, has never tried a lawsuit, has never been in court and had to answer to a judge. Yet, he is going to be superintending the largest Federal circuit in the country. This is what he wrote:

The Senate must be prepared to persuade the public that an insistence on full participation in choosing judges is not a usurpation of power.

That is all we are doing. We are telling the President of the United States—and it is going to get more serious with additional nominees to this circuit—that we have to have some mainstream nominees. We have to do something about the Ninth Circuit, where 27 out of 28 cases were reversed in the term before last, and 13 out of 17 were reversed in the last term. That has been going on for 15 or 20 years. It is not even a secret problem anymore. It is an open, acknowledged problem in American jurisprudence. The U.S. Supreme Court is trying to maintain uniformity of the law.

For example, this summer, the Ninth Circuit was the only circuit to rule that the Prison Litigation Reform Act—passed here to improve some of the horrendous problems we were having with litigation by prisoners—was unconstitutional. Every other circuit that addressed the issue upheld the constitutionality of this act, including the First, Fourth, Sixth, Eighth, and Eleventh Circuit have affirmed the constitutionality of the Prison Litigation Reform Act. But not the Ninth Circuit. It is out there again.

As a matter of fact, I have learned that they utilize an extraordinary amount of funds of the taxpayers on defense of criminal cases. In fact, they have approved one-half of the fees for court-appointed counsel in the entire United States. There are 11 circuits in America. This one is the biggest, but certainly not more than 20, 25 percent of the country—probably less than that. They did half of the court-appointed attorney's fees because they are turning criminal cases into prolonged processes where there is no finality in the judgment—a problem that America is coming to grips with, the Supreme Court is coming to grips with, and the people of this country are coming to grips with. That is just an example of what it means to have a problem there.

Mr. President, I will just say this: This nominee was a law clerk, in addition to never having practiced, and he clerked for Justice Brennan, who was widely recognized as the epitome of judicial activism. His mother is on this court today, the Ninth Circuit, and she is recognized as the most liberal member of the court. Perhaps one other is more liberal. It is a problem we have to deal with.

I would like to mention this. In talking about the confirmation process, he made some unkind and unwise comments about Justice Thomas in a 1991 article. He questioned, I think fundamentally, the integrity of Justice Thomas. What kind of standard do we need to apply here? He believed a very high standard. This is what he said:

Judge Clarence Thomas did have a record, although not distinguished enough to merit President Bush's accolades. But Thomas backed away from that record, pretending he meant none of what he had written, and said that he never talked about Roe v. Wade with anyone and, of course, he didn't talk dirty to Anita Hill either.

The PRESIDING OFFICER. All of the Senator's time has expired.

Mr. SESSIONS. Mr. President, I think that was an unkind comment. I don't believe he is the right person for this circuit, and I object to his nomination.

I yield the floor.

Mr. LEAHY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 11 minutes 4 seconds.

Mr. LEAHY. Mr. President, Mr. Fletcher has waited a long, long time—nearly 3½ years—for this moment. He has been voted out of the Senate Judiciary Committee by an overwhelming margin twice. He is strongly supported by both Republicans and Democrats in this body. He has waited long enough.

I yield back the remainder of my time so we can go to a vote on Professor Fletcher.

The PRESIDING OFFICER. The question is on agreeing to the nomination. Are the yeas and nays requested?

Mr. LEAHY. Mr. President, I think the other side has forgotten to ask for the yeas and nays.

To protect them, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William A. Fletcher, of California, to be a United States Circuit Judge for the Ninth Circuit? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—57

Akaka	Bingaman	Bumpers
Baucus	Boxer	Byrd
Bennett	Breaux	Chafee
Biden	Bryan	Cleland
Collins	Inouye	Moseley-Braun
Conrad	Jeffords	Moynihan
D'Amato	Johnson	Murray
Daschle	Kennedy	Reed
Dodd	Kerrey	Reid
Domenici	Kerry	Robb
Dorgan	Kohl	Rockefeller
Durbin	Landrieu	Roth
Feingold	Lautenberg	Sarbanes
Feinstein	Leahy	Smith (OR)
Ford	Levin	Specter
Gorton	Lieberman	Stevens
Graham	Lugar	Torricelli
Harkin	Mack	Wellstone
Hatch	Mikulski	Wyden

NAYS—41

Abraham	Frist	McConnell
Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Snowe
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	McCain	

NOT VOTING—2

Glenn	Hollings

The nomination was confirmed.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Virginia.

If the Senator will withhold for one moment.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate now confirms Executive Calendar Nos. 803, 804, 808, en bloc.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to address the Senate.

The PRESIDING OFFICER. The Senator from Virginia cannot be heard. Please come to order.

The Senator from Virginia.

Mr. WARNER. Mr. President, I see our distinguished colleague from West Virginia has risen.

May I retain the floor?

Mr. BYRD. Absolutely. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the motion been made to reconsider the vote by which the nominees were confirmed?

The PRESIDING OFFICER. By the agreement, that has been laid on the table and the President is to be immediately notified of the Senate's action.

Mr. BYRD. Very well, has the Senate returned to legislative session?

The PRESIDING OFFICER. It has not.

Mr. WARNER. Mr. President, I wish to address the Senate.

Mr. BYRD. Mr. President, somebody should ask the Senate return to legislative session.

Mr. WARNER. Mr. President, I wish to accommodate the Senate. I understand that there is a need to move to something very quickly to the House of Representatives. Am I correct? If so, I would be happy to yield the floor, with the understanding at the conclusion of that I could regain recognition.

Mr. BYRD. Is this a legislative matter or an executive matter?

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, OCTOBER 9, 1998

Mr. JEFFORDS. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, October 9. I further ask that the time for the two leaders be reserved. I further ask there be 15 minutes to be equally divided between Senators NICKLES and LIEBERMAN prior to the vote in relation to H.R. 2431.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. JEFFORDS. For the information of all Senators, when the Senate reconvenes on Friday, a rollcall vote will occur at 9:45 on passage of H.R. 2431, the religious freedom bill. Following that vote, the Senate may consider any available appropriations conference reports and any other items cleared for action. Therefore, votes can be expected to occur throughout the day and into the evening on Friday in an effort to consider the continuing resolution and any other legislative or Executive Calendar items.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. JEFFORDS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:20 p.m., recessed until Friday, October 9, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 8, 1998:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2000, VICE JOE SCROGGINS, JR., TERM EXPIRED.

DEPARTMENT OF LABOR

KENNETH M. BRESNAHAN, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF LABOR, VICE EDMUNDO A. GONZALES, RESIGNED.

DEPARTMENT OF THE TREASURY

TIMOTHY F. GEITHNER, OF NEW YORK, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE DAVID A. LIPTON.

GARY GENSLER, OF MARYLAND, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE JOHN D. HAWKE, JR.

EDWIN M. TRUMAN, OF MARYLAND, TO BE A DEPUTY UNDER SECRETARY OF THE TREASURY, VICE TIMOTHY F. GEITHNER.

ENVIRONMENTAL PROTECTION AGENCY

TIMOTHY FIELDS, JR., OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, VICE ELLIOTT PEARSON LAWS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1998:

THE JUDICIARY

WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

H. DEAN BUTTRAM, JR., OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

INGE PRYTZ JOHNSON, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

ROBERT BRUCE KING, OF WEST VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 8, 1998, withdrawing from further Senate consideration the following nomination:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2001, VICE MING HSU, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON OCTOBER 5, 1998.